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Contents

Federal Register
Vol. 64, No. 13
Thursday, January 21, 1999

Separate Parts In This Issue

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.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 64, No. 13

Thursday, January 21, 1999

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM151; Special Conditions No. 25–142–SC]

Special Conditions: Boeing Model 757–300 Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 757–300 airplane. This airplane will have a novel or unusual design feature associated with sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: January 14, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2011; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1996, Boeing applied for an amendment to Type Certificate No. A2NM to include the new Model 757–300 airplane, a derivative of the Model 757–200 currently approved under Type Certificate No. A2NM. The Model 757–300 airplane is a swept wing, conventional tail, twin engine, turbofan powered transport. Each engine will be capable of delivering 43,100 pounds of thrust. The airframe has been strengthened to accommodate the increased design loads and weights. The airplane has a seating capacity of up to 295, and a maximum takeoff weight of 270,000 pounds (122,470 Kg).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 757–300 airplane meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change to the Model 757–300. The regulations incorporated by reference in the type certificate are commonly referred to as the ‘‘original type certification basis.’’ The regulations incorporated by reference in Type Certificate No. A2NM include part 25, as amended by Amendments 25–1 through 25–45, and certain other later amended sections of part 25 that are not relevant to these special conditions. In addition, Boeing has chosen to comply with the applicable regulations in effect on February 21, 1996; specifically part 25 as amended by Amendments 25–1 through 25–85 and certain other earlier amended sections of part 25 that are not relevant to these special conditions. Three exemptions have been granted. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 757–300 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 757–300 airplane must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The engine proposed for the Boeing Model 757–300 airplane is a high-bypass ratio fan jet engine that will not seize and produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) related to ‘‘sudden engine stoppage.’’

Discussion

For the engine proposed for the Model 757–300 airplanes, the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned in 14 CFR 25.361(b) when the engine seizure requirement was first adopted. Engines have grown much larger and are now designed with large bypass fans capable of producing much higher torque loads if they become jammed.

Relative to the engine configuration that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards. The latest generation of jet engines are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines.

The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage. In the meantime, a special condition is needed to establish appropriate criteria for the Boeing Model 757–300 airplane.

Limit Engine Torque Loads for Sudden Engine Stoppage

In order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. These special conditions distinguish between the more common seizure events and those rare seizure events resulting from structural failures in the engine. For these more rare but severe seizure events, the criteria would allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by applying a higher factor of safety to the maximum torque load imposed by sudden engine stoppage due to a structural failure.

Discussion of Comments

Notice of proposed special conditions No. 25–98–04–SC for the Boeing Model 757–300 airplanes was published in the **Federal Register** on December 10, 1998 (63 FR 68211). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 757–300. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions is 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 757–300 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 757–300 airplanes.

1. *Engine Torque Loads.* In lieu of compliance with § 25.361(b), compliance with the following special condition is proposed:

(a) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by:

(i) sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) the maximum acceleration of the engine.

(2) The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (a)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the adjacent wing and fuselage supporting structure.

Issued in Renton, Washington, on January 14, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–1352 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–276–AD; Amendment 39–11004; AD 99–02–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the main landing gear (MLG), and repair or replacement of any discrepant component with a new or serviceable component. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent heavy vibration and possible damage to the components of the MLG, and consequent reduced controllability of the airplane during takeoff and landing.

DATES: Effective February 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on November 13, 1998 (63 FR 63423). That action proposed to require a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the main landing gear (MLG), and repair or replacement of any discrepant component with a new or serviceable component.

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

Two commenters state that they are not affected by the proposed rule and, therefore, have no technical comments regarding the proposed rule.

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.

Cost Impact

The FAA estimates that 131 Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,720, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–02–12 Fokker Services B.V.: Amendment 39–11004. Docket 98–NM–276–AD.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–32–113, dated May 28, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent heavy vibration and possible damage to the components of the main landing gear (MLG), and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the MLG, in accordance with Fokker Service Bulletin SBF100–32–113, dated May 28, 1998. If any discrepancy is detected, prior to further flight, repair or replace any discrepant component with a new or serviceable component, in accordance with the service bulletin.

Note 2: In paragraph 2.F.(10) of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–113, dated May 28, 1998, the parenthetical phrase that recommends the size of torque wrench to use, should read ''* * * (0 to 75 lbf ft),'' rather than ''* * * (0 to 75 lbf in)''.

(b) Submit a report of the inspection findings (positive or negative) to Fokker Services B.V., Technical Services, Attn.: Manager Airline Support, P.O. Box 75047, 1117 ZN Schiphol-Oost, the Netherlands; Fax No. 3120605200; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit a report within 10 days after accomplishing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit a report within 30 days after the effective date of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a Menasco MLG having part number (P/N) 41050–5, –6, –7, or –8; or P/N 41060–1 or –2; unless it has been inspected in accordance with paragraph (a) of this AD.

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

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

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

(f) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–32–113, dated May 28, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA 1998–058 (A), dated May 29, 1998.

(g) This amendment becomes effective on February 25, 1999.

Issued in Renton, Washington, on January 12, 1999.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1184 Filed 1–20–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–140–AD; Amendment 39–11003; AD 99–02–11]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes. This amendment requires repetitive tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, and corrective action, if necessary; installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system; and replacement of the valve block of the ground spoiler system with a new part. This amendment also requires eventual replacement of the relief restrictor valves of the ground spoiler system with redesigned parts, which constitutes terminating action for the repetitive tests. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the ground spoilers from unlocking and deploying during takeoff or in flight, and consequent reduced controllability of the airplane.

DATES: Effective February 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on July 22, 1998 (63 FR 39252). That action proposed to require repetitive tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, and corrective action, if necessary; installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system; and replacement of the valve block of the ground spoiler system with a new part. That action also proposed to require eventual replacement of the relief restrictor valves of the ground spoiler system with redesigned parts, which would constitute terminating action for the repetitive tests.

Comment Received

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

One commenter, the manufacturer, expresses no objection to the proposed AD, but submits comments to inform the FAA that a new technical solution has been developed in the form of Dornier Service Bulletin SB–328–29–269, dated July 16, 1998 [which is referenced in the proposed AD as the appropriate source of service information for installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system]. The commenter states that it has classified this service bulletin as optional, and that the service bulletin can be incorporated as an alternate means of compliance to the actions described in Dornier Service Bulletin SB–328–29–237. The commenter further advises that the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, is considering amendment of related German airworthiness directive 1998–031 to include Dornier Service Bulletin SB–328–29–269 as an alternate means of compliance.

The FAA infers that the commenter is suggesting that Dornier Service Bulletin SB–328–29–269, dated July 16, 1998, be added to the AD as an alternative method of compliance. The FAA has reviewed the service bulletin, and concurs that accomplishment of Dornier Service Bulletin SB–328–29–269 is an acceptable alternative method of compliance for the actions required by paragraph (b) of this AD. The FAA has added a new **Note** 2 to include this provision in the final rule.

Conclusion

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

Cost Impact

The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD.

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

It will take approximately 16 work hours per airplane to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $960 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required replacement of the relief restrictor valves, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $120 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required replacement of the valve block, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–02–11 Dornier Luftfahrt GMBH: Amendment 39–11003. Docket 98–NM–140–AD.

Applicability: Model 328–100 series airplanes, certificated in any category, equipped with active ground spoiler option 040–001; as listed in the following service bulletins:

- Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998;
- Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997;
- Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997; and
- Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the ground spoilers from unlocking and deploying during takeoff or in flight, and consequent reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 3,000 total flight hours, or within 300 flight hours after the effective date of this AD, whichever occurs later: Perform tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, in accordance with Dornier Service Bulletin SB–328–29–220, dated May 20, 1997, or Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998.

(1) If no discrepancy is detected, repeat the tests thereafter at intervals not to exceed 3,000 flight hours, until accomplishment of the replacement required by paragraph (c) of this AD.

(2) If any discrepancy is detected, prior to further flight, accomplish the replacement required by paragraph (c) of this AD.

(b) Install additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system, in accordance with Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997, at the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) For airplanes having serial numbers up to and including 3086, equipped with ground spoiler actuator, part number 1059A0000–02: Install within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3086, and equipped with ground spoiler actuator, part number 1059A0000–03: Install within 7 days after the effective date of this AD.

Note 2: Replacement of hydraulic lines and removal of the hydraulic shutoff valve in accordance with Dornier Service Bulletin SB–328–29–269, dated July 16, 1998, is an acceptable alternative method of compliance for the actions required by paragraph (b) of this AD.

(c) Replace the relief restrictor valves of the ground spoiler system, part number ZRV87–2, with a redesigned valve having part number ZRV87–3, in accordance with Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997, at the applicable time specified in either paragraph (c)(1) or (c)(2) of this AD. Accomplishment of this replacement constitutes terminating action for the repetitive tests required by paragraph (a) of this AD.

(1) For airplanes having serial numbers up to and including 3098, equipped with ground spoiler actuator, part number 1059A0000–02: Replace within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3098, equipped with ground spoiler actuator, part number 1059A0000–03: Replace within 7 days after the effective date of this AD.

(d) Replace the valve block of the ground spoiler system with a new part, in accordance with Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997, at the applicable time specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) For airplanes having serial numbers up to and including 3095, equipped with ground spoiler actuator, part number 1059A0000–02: Replace within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3095, equipped with ground spoiler actuator, part number 1059A0000–03: Replace within 7 days after the effective date of this AD.

(e) As of the effective date of this AD, no person shall install on the ground spoiler system of any airplane, a valve block, part number 1060A0000–05, or a relief restrictor valve, part number ZRV87–2.

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

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

(g) 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.

(h) The actions shall be done in accordance with Dornier Service Bulletin SB–328–29–220, dated May 20, 1997; Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998; Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997; Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997; and Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER

Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directives 97–189, dated June 19, 1997; 1998–031, dated January 15, 1998; 1998–046, dated January 29, 1998; and 1997–331/2, dated March 12, 1998.

(i) This amendment becomes effective on February 25, 1999.

Issued in Renton, Washington, on January 12, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1183 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–34]

Revocation of Class E Airspace, Revision of Class D Airspace; Torrance, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will revoke the Class E airspace arrival extensions and revise the Class D airspace area for Torrance Municipal Airport, CA.

DATES: *Effective Date:* 0901 UTC March 25, 1999. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before February 22, 1999.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–34, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520.10, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to incorporate the Class E airspace arrival extensions (E4) into the Class D airspace area associated with Torrance Municipal Airport and lower the ceiling of the reconfigured Class D airspace area to 2,400 feet Mean Sea Level (MSL). An airspace review and analysis of Torrance has made this action necessary. In accordance with FAA Order 7400.2D, Procedures for Handling Airspace Matters, if the length of an arrival extension is less than 2 miles from the surface area, it shall remain a part of the basic surface area. This is the case at Torrance Municipal Airport. The existing Class E airspace for Torrance was published and charted in error as an arrival extension and should be a part of the Class D surface area. The revised altitude of 2,400 feet MSL will provide aircraft the opportunity to operate over Torrance Class D airspace at 2,500 feet MSL and above without having to obtain permission from Torrance Airport Traffic Control Tower. This is a commonly used altitude in this area for aircraft flying off shore to avoid the Los Angeles Class B airspace. Class D airspace areas are published in Paragraph 5000 and Class E4 airspace areas are published in Paragraph 6004 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be subsequently removed from this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on essentially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–AWP–34.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP CA E4 Torrance, CA [Removed]

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Torrance, CA [Revised]

Torrance Municipal Airport, CA
(Lat. 33°48′12″ N, long. 118°20′22″ W)
Los Angeles VORTAC
(Lat. 33°55′59″ N, long. 118°25′55″ W)

That airspace extending upward from the surface to and including 2,400 feet MSL within a 2.6 mile radius of the Torrance Municipal Airport including that airspace within 2 miles each side of the Los Angeles VORTAC 149° radial, extending from the 2.6 mile radius of the Torrance Municipal Airport to 4 miles northwest of the airport and within 2 miles of each side of the 304° bearing from the airport, extending from the 2.6 mile radius of the airport to 4 miles northwest of the airport and within 1.8 miles each side of the Torrance localizer course extending from the 2.6 mile radius of the airport to 4.4 miles southeast of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on January 4, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–1355 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–55]

Revision of Class E Airspace; Monroe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Monroe, LA. The development of very high frequency omnidirectional range/distance measuring equipment (VOR/DME) and nondirectional radio beacon (NDB) standard instrument approach procedures (SIAP's) to Monroe Regional Airport, Monroe, LA, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Monroe Regional Airport, Monroe, LA.

DATES: *Effective:* 0901 UTC, May 20, 1999. Comments must be received on or before March 8, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–55, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Monroe, LA. The development of VOR/DME and NDB SIAP's to Monroe Regional Airport, Monroe, LA, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Monroe Regional Airport, Monroe, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–55.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW LA E5 Monroe, LA [Revised]

Monroe Regional Airport, LA
(Lat. 32°30′39″ N., long. 92°02′16″ W.)
Monroe VORTAC
(Lat. 32°31′01″ N., long 92°02′10″ W.)
Rayville, John H. Hooks Jr. Memorial Airport, LA
(Lat. 32°29′11″ N., long. 91°46′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Monroe Regional Airport and within 2.7 miles north and 4.3 miles south of the 217° radial of the Monroe VORTAC extending from the 7-mile radius to 11.8 miles southwest of the airport and within 3 miles north and 2.5 miles south of the 60° radial of the Monroe VORTAC extending from the 7-mile radius to 7.7 miles northeast of the airport and within a 6.4-mile radius of John H. Hooks Jr. Memorial Airport and within 1.7 miles each side of the 098° radial of the Monroe VORTAC extending from the 6.4-mile radius to 12.7 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on January 8, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–1357 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–54]

Revision of Class E Airspace; San Antonio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at San Antonio, TX. The development of global positioning system (GPS) standard instrument approach procedures (SIAP's) to runways (RWY's) 31 and 35 and a nondirectional radio beacon (NDB) SIAP to New Braunfels Municipal Airport, TX has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to New Braunfels Municipal Airport, TX.

DATES: *Effective:* 0901 UTC, May 20, 1999. Comments must be received on or before March 8, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–54, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: .

This amendment to 14 CFR part 71 revises the Class E airspace at San Antonio, TX. The development of GPS SIAP's to RWY's 31 and 35 and a NDB SIAP at New Braunfels Municipal Airport, TX has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to New Braunfels Municipal Airport, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–54.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 San Antonio, TX [Revised]

San Antonio International Airport, TX
(Lat. 29°32′01″ N., long. 98°28′11″ W.)
New Braunfels Municipal Airport, TX
(Lat. 29°42′16″ N., long. 98°02′32″ W.)
San Antonio VORTAC
(Lat. 29°38′39″ N., long. 98°27′41″ W.)
Randolph VOR
(Lat. 29°31′09″ N., long. 98°17′06″ W.)
Stinson VOR
(Lat. 29°15′30″ N., long. 98°26′37″ W.)
Castroville Municipal Airport, TX
(Lat. 29°20′33″ N., long. 98°51′04″ W.)
Castroville NDB
(Lat. 29°20′46″ N., long. 98°50′57″ W.)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of San Antonio International Airport and within 6.9-mile radius of New Braunfels Municipal Airport and within 4 miles each side of the 080° radial of the San Antonio VORTAC extending from the 6.9-mile radius to 11.2 miles east of the airport and within 4 miles north and 6.5 miles south of the 331° bearing from New Braunfels Municipal Airport extending from the 6.9-mile radius to 9.7 miles northwest of the airport and within 2 miles each side of the 181° bearing from the New Braunfels Municipal Airport extending from the 6.9-mile radius to 9 miles south of the airport and within 2 miles each side of the 136° bearing from the New Braunfels Municipal Airport extending from the 6.9-mile radius to 7.6 miles southeast of the airport and within 8 miles east and 4 miles west of the 144° radial of the Randolph VOR extending from the 20-mile radius to 20.6 miles southeast of the VOR and within 8 miles east and 4 miles west of the 152° radial of the Stinson VOR extending from the 20-mile radius to 16 miles southeast of the VOR and within a 6.5-mile radius of Castroville

Municipal Airport and within 8 miles west and 4 miles east of the 170° bearing from the Castroville NDB extending from the NDB to 16 miles south of the NDB.

* * * * *

Issued in Fort Worth, TX, on January 8, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–1356 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–30]

Realignment of Federal Airways and Jet Routes; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns six jet routes and eight Federal airways in the Amarillo, TX, area due to the decommissioning of the Amarillo, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the commissioning of the Panhandle, TX, VORTAC which is located approximately 4.3 nautical miles (NM) southwest of the former location of the Amarillo VORTAC. Specifically, this rule realigns the affected jet routes and Federal airways from the Amarillo VORTAC to the Panhandle VORTAC. The FAA is taking this action to more effectively manage air traffic in the Amarillo, TX, area.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1998, the FAA proposed to amend 14 CFR part 71 to realign six jet routes and eight Federal airways located in the Amarillo, TX, area (63 FR 44413). The FAA proposed this action as a result of an FAA Airspace Study to enhance the flow of air traffic in the Amarillo, TX, area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, and the correction to the ''Panhandle, TX, 250°'' radial to the ''Panhandle, TX, 255° radial'' in the description for V–402, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) realigns six jet routes and eight Federal airways. This realignment is due to the decommissioning of the Amarillo VORTAC, and the commissioning of the Panhandle VORTAC. The Panhandle VORTAC is located approximately 4.3 NM southwest of the former location of the Amarillo VORTAC. Specifically, J–6, J–14, J–17, J–26, J–58, J–78, V–12, V–81, V–114, V–140, V–280, V–304, V–402, and V–440 have been realigned from the Amarillo VORTAC to the Panhandle VORTAC.

Jet routes and VOR Federal airways are published in Sections 2004 and 6010(a), respectively, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The jet routes and Federal airways listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004—Jet Routes

* * * * *

J–6 [Revised]

From Salinas, CA, via INT Salinas 145° and Avenal, CA, 292° radials; Avenal; INT Avenal 119° and Palmdale, CA, 310° radials; Palmdale; Hector, CA; Needles, CA; Drake, AZ; Zuni, AZ; Albuquerque, NM; Tucumcari, NM; Panhandle, TX; Will Rogers, OK; Little Rock, AR; Bowling Green, KY; Charleston, WV; INT Charleston 076° and Martinsburg, WV, 243° radials; Martinsburg; Lancaster, PA; Broadway, NJ; Sparta, NJ; Albany, NY; to Plattsburg, NY.

* * * * *

J–14 [Revised]

From Panhandle, TX; via Will Rogers, OK; Little Rock, AR; Vulcan, AL; to Atlanta, GA; INT Atlanta 087° and Spartanburg, SC, 234° radials; Spartanburg; Greensboro, NC; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; to Patuxent.

* * * * *

J–17 [Revised]

From San Antonio, TX; via Abilene, TX; Panhandle, TX; Tobe, CO; Pueblo, CO; Falcon, CO; Cheyenne, WY; to Rapid City, SD.

* * * * *

J–26 [Revised]

From Ciudad Juarez, Mexico, via El Paso, TX; INT of El Paso 070° and Chisum, NM, 215° radials; Chisum; Panhandle, TX; Gage, OK; Wichita, KS; Kansas City, MO; Kirksville, MO; Bradford, IL; to Joliet, IL. The airspace within Mexico is excluded.

* * * * *

J–58 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Panhandle, TX; Wichita Falls, TX; Ranger, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 105° and Crestview, FL, 201° radials; INT of Grand Isle 105° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to the INT Lee County 120° and Dolphin, FL, 293° radials; Dolphin.

* * * * *

J–78 [Revised]

From Los Angeles, CA, via Seal Beach, CA; Thermal, CA; Parker, CA; Drake, AZ; Zuni, AZ; Albuquerque, NM; Tucumcari, NM; Panhandle, TX; Will Rogers, OK; Tulsa, OK; Farmington, MO; Louisville, KY; Charleston, WV; Philipsburg, PA; to Milton, PA.

* * * * *

Paragraph 6010—VOR Federal Airways

* * * * *

V–12 [Revised]

From Gaviota, CA, via San Marcus, CA; Palmdale, CA; 38 miles, 6 miles wide, Hector, CA; 12 miles, 38 miles, 85 MSL, 14 miles, 75 MSL, Needles, CA; 45 miles, 34 miles, 95 MSL, Drake, AZ; Winslow, AZ; 30 miles 85 MSL, Zuni, NM; Albuquerque, NM; Otto, NM; Anton Chico, NM; Tucumcari, NM; Panhandle, TX; Gage, OK; Anthony, KS; Wichita, KS; Emporia, KS; Napoleon, MO; INT Napoleon 095° and Columbia, MO, 292° radials; Columbia; Foristell, MO; Troy, IL; Bible Grove, IL; Shelbyville, IN; Richmond, IN; Dayton, OH; Appleton, OH, Newcomerstown, OH; Allegheny, PA; Johnstown, PA; Harrisburg, PA; INT Harrisburg 092° and Pottstown, PA, 278° radials; to Pottstown.

* * * * *

V–81 [Revised]

From Chihuahua, Mexico, via Marfa, TX; Fort Stockton, TX; Midland, TX; Lubbock, TX; Plainview, TX; Panhandle, TX; Dalhart, TX; Tobe, CO; Pueblo, CO; Black Forest, CO; Jeffco, CO; Cheyenne, WY; Scottsbluff, NE; to Chadron, NE. The airspace outside the United States is excluded.

* * * * *

V–114 [Revised]

From Panhandle, TX, via Childress, TX; Wichita Falls, TX; INT Wichita Falls 117° and Blue Ridge, TX, 285° radials; Blue Ridge; Quitman, TX; Gregg County, TX; Alexandria, LA; INT Baton Rouge, LA, 307° and Lafayette, LA, 042° radials; 7 miles wide (3 miles north and 4 miles south of centerline); Baton Rouge; INT Baton Rouge 112° and Reserve, LA, 323° radials; Reserve; INT Reserve 084° and Gulfport, MS, 247° radials; Gulfport; INT Gulfport 344° and Eaton, MS, 171° radials; to Eaton, excluding the portion within R–3801B and R–3801C.

* * * * *

V–140 [Revised]

From Panhandle, TX, via Sayre, OK; Kingfisher, OK; INT Kingfisher 072° and Tulsa, OK, 261° radials; Tulsa; Razorback, AR; Harrison, AR, Walnut Ridge, AR; Dyersburg, TN; Nashville, TN; to Livingston, TN; London, KY; Hazard, KY; Bluefield, WV; INT of Bluefield 071° and Montebello, VA, 250° radials; Montebello; to Casanova, VA.

* * * * *

V–280 [Revised]

From Ciudad Juarez, Mexico, via El Paso, TX; INT El Paso 070° and Pinon, NM, 219° radials; Pinon; Chisum, NM; INT Chisum 063° and Texico, NM, 218° radials; Texico; Panhandle, TX; Gage, OK; INT Gage 025° and Hutchinson, KS, 234° radials; Hutchinson; INT Hutchinson 061° and Topeka, KS, 236° radials; to Topeka. The airspace within Mexico is excluded.

* * * * *

V–304 [Revised]

From Panhandle, TX, via Borger, TX; Liberal, KS; 15 miles, 79 miles 55 MSL, Lamar, CO.

* * * * *

V–402 [Revised]

From Tucumcari, NM, via INT Tucumcari 101° and Panhandle, TX 255° radials; Panhandle; INT Panhandle 070° and Gage, OK, 215° radials; to Gage.

* * * * *

V–440 [Revised]

From Panhandle, TX, via INT Panhandle 070° and Sayre, OK, 288° radials; Sayre; INT Sayre 104° and Will Rogers, OK, 248° radials; to Will Rogers.

* * * * *

Issued in Washington, DC, on January 14, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–1353 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 201

Filing of Commuter Air Carrier Fitness Applications

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is revising 14 CFR Part 201 by changing the location within the Department for the filing of commuter air carrier fitness applications. These applications will now be filed with Department of Transportation Dockets, 400 7th Street, SW., Washington, DC 20590–0002, instead of with the Air Carrier Fitness Division of the Office of Aviation Analysis.

DATES: This regulation is effective on February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia L. Thomas, Chief, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–9721.

SUPPLEMENTARY INFORMATION: The Department's regulations require that commuter air carriers must file applications for a determination of initial fitness before receiving authority to operate. These applications are now filed with the Air Carrier Fitness Division in the Office of the Secretary. This office now maintains its own ''docket'' for these applications, which is available to the public.

When the decision about the filing location for commuter applications was initially adopted, processing of such applications, including maintaining a ''docket'' for such filings, was done by the analysts handling each application. However, over time, the workload of maintaining the public record of such cases has become more burdensome to the staff and less convenient to the public. Recently, the Department has consolidated all of the docket offices for all of its modes into one central location and has automated the process of maintaining the public dockets. Filings in DOT Dockets are now easily available to the public and staff on the Internet and are saved in unalterable form electronically, whereas public access to commuter filings in the Air Carrier Fitness Division is more difficult because of the physical location of that office within the Department's building and because such filings are only available in hard copy form. Thus, we believe that the public interest would be better served if commuter applications were filed with DOT Dockets and made part of a public docket. Applicants for commuter authority will continue to file an original and two copies of their applications and supporting information. As is the case now, commuter registration forms and amendments (OST Form 4507) and evidence of insurance coverage (OST Form 6410) will be filed directly with the Air Carrier Fitness Division. Commuter applicants seeking confidential treatment of specific documents submitted as part of their applications should follow the procedures in 14 CFR 302.39. Information granted confidential treatment by the Department is not scanned into the automated system and is not available to the public, except as may be determined by the Department under the procedures in Rule 39.

Analysis of Regulatory Impacts

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities, since the rule only changes the filing location. Because of the very limited procedural effect of this rule, notice and comment on this rulemaking is unnecessary.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment. This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995. Finally, this rule does not impose any collection of information requirements requiring review under the Paperwork Reduction Act of 1995.

This rule is not subject to Congressional review provisions of 5 U.S.C. 801(a)(1) because it is limited to a change in agency procedure and practice and does not substantially affect the rights or obligations of non-agency parties. This rule only addresses the location for filing commuter air carrier fitness applications.

List of Subjects in 14 CFR Part 201

Air carriers, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth above, 14 CFR Part 201 is amended as follows:

PART 201—AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES

1. The authority citation for part 201 continues to read as follows:

Authority: 5 U.S.C. 1008; 49 U.S.C. Chapters 401, 411, 413, 415, 417.

2. Paragraph (b) of section 201.1 is amended by revising the last sentence to read as follows:

§ 201.1. Formal requirements.

* * * * *

(b) * * * An executed original plus two (2) true copies of the fitness data shall be filed with DOT Dockets, PL–401, 400 7th Street, SW., Washington, DC 20590–0002. Requests for confidential treatment of documents should be filed in accordance with the requirements of part 302 of this chapter.

Issued in Washington, DC on January 12, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–1275 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 212

Filing of Airline Codesharing Agreements and Statements of Authorization for Codesharing

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is changing the location specified in 14 CFR Part 212 for the filing of applications for statements of authorization to operate codeshare services between U.S. and foreign air carriers, and between foreign air carriers, including the accompanying codeshare agreements between U.S. and foreign air carriers. These applications will now be filed with DOT Dockets, 400 7th Street, SW., Washington, DC 20590–0002, instead of with the Office of International Aviation.

DATES: This regulation is effective on February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Terri Bingham or George Wellington, Office of the Secretary, Office of International Aviation, X–40, Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2390 or 366–2391.

SUPPLEMENTARY INFORMATION: The Department's regulations require that airlines file applications for statements of authorization to engage in defined ''long-term'' wet leases between U.S. and foreign air carriers, and between foreign air carriers. The rules (14 CFR 212.10) establish the detailed filing requirements for these applications. The Department has previously determined that codeshare services constitute a form of ''wet lease'' applications, and that, therefore, codeshare applications should be considered under the same procedural and decisional rules applicable to wet-lease operations. The Department also requires that underlying codeshare agreements and other agreements, if any, accompany the application. These applications are now filed with the Director, Office of International Aviation. This office maintains its own ''docket'' for these applications, which is available to the public for review in that Office.

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its aviation economic regulations contained in 14 CFR Chapter II to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. Among the regulations reviewed are those governing the filing of these applications.

When the rule about the filing location for wet leases was initially adopted, few codeshare applications were filed with the Department, and those that were filed resulted in generally limited public comments and few significant public interest issues. With the growing popularity of codeshare operations, the volume of applications has markedly increased, as has the number of comments received and the scope of the public interest issues presented. Indeed, with many of these applications, significant public interest issues are now likely to be faced by the Department, such as those relating to exclusivity arrangements between the applicant codeshare partners. These issues in turn have lengthened the review process involved, and resulted in more extensive public comment and interest. This change thereby has heightened the need for filing procedures that maximize transparency and public awareness. Public access to these codeshare filings in the Office of International Aviation is more difficult than if the filings had been made part of a public docket in DOT Dockets. Filings in DOT Dockets are also now easily available to public and staff on the internet and are saved in unalterable form electronically. We believe that the public interest would thus be better served if these filings were made to DOT Dockets and made part of a public docket. No other changes to the requirements for these filings are being made. Since this rule only involves a change of filing location, public comment on this rule would be impracticable, unnecessary, and contrary to the public interest.

Analysis of Regulatory Impacts

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in

DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities, since it only changes the filing location.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment. This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995. Finally, this rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995.

This rule is not subject to congressional review provisions of 5 U.S.C. 801(a)(1) because it is limited to a change in agency procedure and practice and does not substantially affect the rights or obligations of non-agency parties. This rule only addresses the location for filing applications for statements of authorization to operate codeshare services.

List of Subjects for 14 CFR Part 212

Air Carriers, Charter flights, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, for the reasons set forth above, 14 CFR Part 212 is amended as follows:

PART 212—CHARTER RULES FOR U.S. AND FOREIGN DIRECT AIR CARRIERS

1. The authority citation for part 212 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41504, 41702, 41708, 41712, 46101.

2. Paragraph (a) of section 212.10 is amended by revising the third sentence, and paragraph (f)(1) of section 212.10 is amended by adding a new sentence after the first sentence to read as follows:

§ 212.10 Application for statement of authorization.

(a) * * * Except for an application for a long-term wet lease involving a codeshare agreement, an original and two copies of an application shall be submitted to the Department of Transportation, Office of International Aviation, U.S. Air Carrier Licensing Division, X–44 (for an application by a certificated air carrier), or Foreign Air Carrier Licensing Division, X–45 (for an application by a foreign air carrier), 400 7th Street, SW., Washington, DC 20590; an original and two copies of an application for a long-term wet lease involving a codeshare agreement shall be submitted to DOT Dockets, PL–401, 400 7th Street, SW., Washington, DC 20590, or by electronic submission to DOT Dockets according to procedures at the DOT Dockets website. * * *

* * * * *

(f)(1) * * * Such information with respect to codeshare applications and responsive pleadings will be available for public inspection at DOT Dockets or at the DOT Dockets website. * * *

* * * * *

Issued in Washington, D.C. on January 12, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–1276 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 743

[Docket No. 980911233–9007–03]

RIN 0694–AB80

Correction to Encryption Items

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: On December 31, 1998 (63 FR 72156), the Bureau of Export Administration published an interim rule revising the Export Administration Regulations (EAR) to streamline U.S. controls for exports and reexports of encryption commodities and software. This revision implemented the Administration's September 1998 policy initiative for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms.

This regulation amends the EAR by correcting three inadvertent typographic errors in the Encryption Items regulation which appeared in the **Federal Register** on December 31, 1998.

EFFECTIVE DATE: This rule is effective January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Ruggiero, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

On December 31, 1998, the Bureau of Export Administration published a regulation updating its encryption policy. This regulation corrects three typographical errors in that notice.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 52.5 minutes per submission; and 0694–0104, ''Commercial Encryption Items Transferred from the Department of State to the Department of Commerce.'' The Department has submitted to OMB an emergency request for approval of the changes to the collection of information under OMB control number 0694–0104. Comments on collection 0694–0104 will be accepted until March 1, 1999.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United

States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 742

Exports, Foreign trade, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 743 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997, 3 CFR, 1997 Comp., p. 306; Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

PART 742—[CORRECTED]

§ 742.15 [Corrected]

3. Section 742.15 is amended by revising the second ''v'' paragraph designation in paragraph (b)(6) to read ''vi''.

4. Supplement No. 4 to Part 742 is amended by revising the title of the supplement to read ''Key Escrow or Key Recovery Products Criteria''.

PART 743—[CORRECTED]

§ 743.1 [Corrected]

5. Section 743.1 is amended by revising the phrase ''ENC'' in the first sentence of paragraph (b) to read ''and GOV''.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–1344 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0117a FRL–6213–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern the recission of rules for a market incentive program for the Antelope Valley Air Pollution Control District (AVAPCD). The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these recissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on March 22, 1999 without further notice, unless EPA receives adverse comments by February 22, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office, AIR–4, at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

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

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

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

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved for recission from the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP include: AVAPCD Regulation XX, Regional Clean Air Incentives Market—RECLAIM: Rule 2000, General; Rule 2001, Applicability; Rule 2002, Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X); Rule 2004, Requirements; Rule 2005, New Source Review for RECLAIM; Rule 2006, Permits; Rule 2007, Trading Requirements; Rule 2008, Mobile Source Credits; Rule 2010, Administrative Remedies and Sanctions; Rule 2011, Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions; Rule 2011, Appendix A—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions; Rule 2012, Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions; Rule 2012, Appendix A—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions; and Rule 2015, Backstop Provisions. These rules are currently a part of the federally enforceable SIP. The rule recissions were submitted by the California Air Resources Board to EPA on June 28, 1998.

II. Background

The AVAPCD was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all air pollution control responsibilities of the South Coast Air Quality Management District (SCAQMD) in the Antelope Valley region of Los Angeles County,[1] effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area.

The rules being approved for recission for AVAPCD were adopted by the SCAQMD for the purpose of establishing a market incentive program designed to allow facilities flexibility in achieving emission reduction requirements under SCAQMD's Air

[1] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

Quality Management Plan. RECLAIM was not applicable to the Antelope Valley portion of the SCAQMD because RECLAIM only applies in the South Coast Air Basin and Antelope Valley is part of the Mojave Desert Air Basin.

EPA has determined that the recission of Regulation XX as it applies to the AVAPCD is approvable because it is not currently being implemented at any large source in the Antelope Valley area, and major sources in the District have expressed a lack of desire to participate in RECLAIM. Further, all sources within the Antelope Valley area are required to comply with existing NO_X and SO_X regulations in the AVAPCD Rulebook. Since EPA has determined that Regulation XX is an inapplicable and unnecessary regulation for AVAPCD, EPA is approving the recission.

The State of California submitted many revised rules for incorporation into its SIP on June 23, 1998, including the rule recissions being acted on in this document. This document addresses EPA's direct final action for approving the recission of AVAPCD's Regulation XX, which includes Rules 2000 to 2002, 2004 to 2008, 2010, 2011, 2011-Appendix A, 2012, 2012-Appendix A, and 2015. The revision was adopted on January 20, 1998 by the Governing Board of the AVAPCD. These revisions were found to be complete on August 25, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [2] and are being approved for recission from the SIP.

III. EPA Evaluation and Action

EPA has evaluated the submitted rule recissions and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recission of AVAPCD Regulation XX, Rules 2000 to 2002, 2004 to 2008, 2010, 2011, 2011-Appendix A, 2012, 2012-Appendix A, and 2015 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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 adverse comments be filed. This rule will be effective March 22, 1999 without further notice unless the Agency receives adverse comments by February 22, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 22, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and

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

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 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 10, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(232)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(232) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on November 8, 1996 now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District, Regulation XX.

* * * * *

[FR Doc. 99–1261 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[UT–001–0002a; FRL–6201–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake City Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 24, 1995, the Governor of Utah submitted a request to redesignate the Salt Lake City (SLC) ''not classified'' carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan and revisions to Utah Administrative Code Rule (UACR) R307–1–3.3 to ensure that rules applicable to the SLC CO nonattainment area remain in effect after SLC is redesignated to attainment. On December 9, 1996, the Governor submitted a revised SLC CO maintenance plan that incorporated revised contingency measures, updated air quality monitoring data, and other minor revisions to the maintenance plan. In this action, EPA is approving the SLC redesignation request, the revised maintenance plan, and the changes to UACR R307–1–3.3.

DATES: This direct final rule is effective on March 22, 1999 without further notice, unless EPA receives adverse comments by February 22, 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: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and,

United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Utah Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, Salt Lake City Utah, 84114–4820.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), EPA designated the SLC area as nonattainment for CO because the area had been previously designated as nonattainment before November 15, 1990. The SLC area was classified as a ''not classified'' CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.[1]

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(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;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Thus, before EPA can approve the redesignation request, EPA must find, among other things, that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. EPA notes there are no outstanding SIP elements necessary for the redesignation. However, the Governor has requested approval of revisions to R307–1–3.3 to ensure that new source review rules applicable to the SLC nonattainment area remain in effect after SLC is redesignated to attainment. Therefore, EPA is approving the revisions to R307–1–3.3 at the same time it approves the redesignation.

EPA has reviewed the State's redesignation request, maintenance plan, and related SIP revisions and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). Descriptions of how the section 107(d)(3)(E) requirements are being addressed are provided below.

Section 1. Brief Administrative History of the SLC CO Redesignation Request, Maintenance Plan, and Related SIP Submittal

On November 24, 1995, the Governor of Utah submitted a CO redesignation request and maintenance plan for the SLC area along with revisions to the Utah Administrative Code Rule (UACR) R307–1–3.3 to ensure that new source review rules applicable to the SLC nonattainment area remain in effect after SLC is redesignated to attainment. On December 9, 1996, the Governor submitted a revised maintenance plan. The purpose of the December 9, 1996, submittal was to provide revised contingency measures, updated air quality monitoring data, and other minor revisions to the maintenance plan.

Section 2. Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Rather, for an area to be considered attainment, each of the CO ambient air quality monitors in the area are allowed to record no more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, Appendix C. If a single monitor in the CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, EPA's interpretation of the CAA and EPA national policy[2] has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for a continuous two-year calendar period and, additionally, at least through the date that EPA promulgates the redesignation to attainment in the **Federal Register**.

Utah's CO redesignation request for the SLC area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. Ambient air quality monitoring data for consecutive calendar years 1992 through 1997 show a measured exceedance rate of 1.0 or less per year, per monitor, of the CO NAAQS in the SLC nonattainment area. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in section IX.C.7.c of the State's maintenance plan and in the State's TSD. Since 1988, only one exceedance of the 9.0 ppm CO standard has been measured and this occurred in 1994. EPA notes, however, that the SLC area has not violated the CO standard and continues to demonstrate attainment.

[1] The EPA describes areas as ''not classified'' if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C)) at enactment, and if the area did not violate the primary CO NAAQS in either year for the 2-year period of 1988 through 1989. Refer to the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'', 57 FR 13498, April 16, 1992. See specifically 57 FR 13535, April 16, 1992.

[2] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

Because the SLC nonattainment area has quality-assured data showing no violations of the CO NAAQS for 1993 and 1994, the years the State used to support the redesignation request, and additionally, over the most recent consecutive two-calendar-year period, the SLC area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. EPA notes that the State of Utah has also committed in the maintenance plan to the necessary continued operation of the CO monitoring network in compliance with all applicable federal regulations and guidelines.

Section 3. Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

Section 107(d)(3)(E)(v) requires that, to be redesignated to attainment, an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the CAA due after the submission of a complete redesignation request need not be considered in evaluating the request.

A. CAA Section 110 Requirements

On August 15, 1984, EPA approved revisions to Utah's SIP (45 FR 32575) as meeting the requirements of section 110(a)(2) of the CAA. Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. The only additional CAA requirement assigned to the SLC area was the preparation and submittal of a 1990 base year CO emission inventory. The Governor submitted this base year inventory on July 11, 1994. EPA approved this inventory on June 29, 1995 (60 FR 33745). Thus, EPA has determined that the SIP revisions approved in 1984 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 45 FR 32575.

B. Part D Requirements

Before the SLC not classified CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The General Preamble (57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for not classified CO areas (see 57 FR 13535):

> ''Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO ''not classified'' areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply.''

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694). In the case of the SLC area, the due date was November 15, 1993. As the SLC CO redesignation request and maintenance plan were not submitted by the Governor until November 24, 1995, the General Preamble (57 FR 13535) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), and 172(c)(7) (the section 110(a)(2) air quality monitoring requirements)). EPA has determined that Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to not classified CO areas. See 57 FR 13535, April 16, 1992. It is also worth noting that EPA has interpreted the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR § 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, EPA has decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

In that action, EPA explained that its decision was based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation conformity rules even after redesignation and would risk sanctions for failure to do so. Unlike most requirements of section 110 and part D, which are linked to the nonattainment status of an area, and are not required after redesignation of an area to attainment, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Further information regarding transportation conformity and mobile source emission budgets are found below in section II ''Transportation Conformity''.

The applicable requirements of CAA section 172 are discussed below.

(1.) Section 172(c)(3)—Emissions Inventory. Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the SLC nonattainment area. EPA's interpretation of the emission inventory requirement for ''not classified'' CO nonattainment areas is detailed in the General Preamble (57 FR 13535, April 16, 1992). EPA determined that an emissions inventory is specifically required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment. EPA concluded that an emissions inventory must be included as a revision to the SIP and was due 3 years from the time of the area's designation. For ''not classified'' CO areas, this date became November 15, 1993. To address the section 172(c)(3) requirement for a ''current'' inventory, EPA interpreted ''current'' to mean calendar year 1990 (See 57 FR 13502, April 16, 1992).

On July 11, 1994, the Governor submitted the 1990 base year inventory for the SLC CO nonattainment area. EPA approved this 1990 base year CO inventory on June 29, 1995 (60 FR 33745).

(2.) Section 172(c)(5) New Source Review (NSR). The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Utah has a fully-approved NSR program (60 FR 22277, May 5, 1995) that meets the requirements of CAA section 172(c)(5).

(3.) Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements. According to EPA's interpretations presented in the General Preamble (57 FR 13535), ''not classified'' CO nonattainment areas should meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172 (b) and (c) of the CAA. With respect to this requirement, the State indicates in section IX, Part C.7.c. (''Carbon Monoxide Monitoring'') of the maintenance plan, that ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) since 1986 for the SLC area. Air quality data through 1994 are included in section IX, Part C.7.c. of the maintenance plan and Volume 1 of the State's TSD. EPA has more recently polled the AIRS database and has verified that the State has also uploaded additional ambient CO data through 1997. The data in AIRS indicate that the SLC area has shown, and continues to show, attainment of the CO NAAQS. The State also notes (section IX, Part C.7.c.(1)) that information concerning CO monitoring in Utah is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Since the early 1980's, the MNR has been updated annually and submitted to EPA for approval. EPA personnel have concurred with Utah's annual network reviews and have agreed that the SLC network remains adequate. Finally, in section IX, Part C.7.c.(5) of the maintenance plan, the State commits to the continued operation of the existing CO monitors, according to all applicable Federal regulations and guidelines, even after the SLC area is redesignated to attainment for CO. The State also notes that it will reevaluate monitoring site locations annually to determine whether new monitoring sites are needed or if the existing monitors should be relocated or removed.

Section 4. Redesignation Criterion: The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA. Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA and EPA's prior approval of SIP revisions required under the 1990 amendments to the CAA, EPA has determined that Utah has a fully approved CO SIP under section 110(k) for the SLC CO nonattainment area.

Section 5. Redesignation Criterion: The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions. Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan (SLC CO revision as approved on August 15, 1984, 49 FR 32575), implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions that were derived from the August 15, 1984, SIP revision, and as further described in section IX.C.7.b of the December 9, 1996, SLC maintenance plan, were achieved primarily through a Federal emission control measure and CAA-required improvements to the basic vehicle inspection and maintenance (I/M) program. The Federal measure involved CO emission reductions from fleet turnover, which is regulated by the Federal Motor Vehicle Control Program (FMVCP).

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles (''fleet turnover''), emission reductions are realized for a particular area such as SLC. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

As stated in section IX.C.7.b.(4) of the maintenance plan, additional emission reductions from Salt Lake County's basic I/M program resulted from a major revision that was fully implemented prior to September 1, 1991. This revision was made in response to a 1990 State legislative mandate that Utah Counties administering the basic I/M program use computerized analyzers, standardize their programs, and provide reciprocity. These improvements involved the use of BAR90 technology emissions analyzers, the inclusion of vehicles owned by federal agencies, federal employees, university and college employees and students, an increased fail rate, the exclusive issuance of waivers by I/M technical center staff, an increase in the dollar amount spent on emission-related repairs to qualify for a waiver, automated data management and audit functions, and coverage of more emission control devices by the Salt Lake County anti-tampering program. Also, as a result of separate State legislation, the number of vehicles qualifying for exemption from the I/M program because of the ''farm truck'' classification was reduced.

EPA has evaluated the various State and Federal control measures, the 1990 base year emission inventory, the 1993 attainment year emission inventory, and the projected emissions described below, and has concluded that the improvement in air quality in the SLC nonattainment area has resulted from emission reductions that are permanent and enforceable.

Section 6. Redesignation Criterion: The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A. Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, EPA issued further maintenance plan interpretations in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992. In this **Federal Register** action, EPA is approving the State of Utah's maintenance plan for the SLC nonattainment area because EPA has determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. EPA's analysis of the pertinent maintenance plan requirements, with reference to the Governor's December 9, 1996, submittal, is provided as follows:

A. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum referenced above. Under EPA's interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the SLC area, the State selected the emissions inventory approach for demonstrating maintenance of the CO NAAQS.

The maintenance plan that the Governor submitted on December 9, 1996, included comprehensive inventories of CO emissions for the SLC area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1993 as the year from which to develop the attainment year inventory and included year-by-year projections out to 2006. More detailed descriptions of the 1993 attainment year inventory and the projected inventories are documented in the maintenance plan, sections IX.C.7.e and IX.C.7.f, and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1993 attainment year and a sampling of the projected years are provided in the Table I.–1 below.

TABLE I.–1—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR SLC

	1993	1997	2000	2003	2006
Point Sources	0.55	1.57	1.63	1.71	1.79
Area Sources	14.65	14.93	15.12	15.32	15.53
Non-Road Mobile Sources	8.29	9.37	10.10	10.91	11.79
On-Road Mobile Sources	202.24	169.56	154.66	145.64	145.37
Total	225.73	195.43	181.51	173.58	174.48

B. Demonstration of Maintenance—Projected Inventories

As noted above, total CO emissions were projected by the State year-by-year from 1994 through 2006. These projected inventories were prepared in accordance with EPA guidance (further information is provided in section IX.C.7.f of the maintenance plan). EPA notes, however, that CAA section 175A(a) requires that the maintenance demonstration ''* * * provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Therefore, based on this CAA provision, the maintenance demonstration needed to project emissions to at least 2008, not just 2006. To address this issue, EPA consulted with the State to identify the specific materials that were provided at the SLC CO redesignation public hearing and which were subsequently adopted by the Utah Air Quality Board (UAQB). In a letter dated February 19, 1998, from Ursula Trueman, Director, Utah Division of Air Quality, to Richard Long, Director, Air Program, EPA Region VIII, the State provided an excerpt from the SLC CO redesignation Technical Support Document (TSD) that provided additional projected CO daily emissions for all years from 1993 through 2016. As indicated in the State's February 19, 1998, letter, these additional projected CO emissions were part of the TSD that was provided with the public hearing for the SLC CO redesignation and that was also adopted, along with the redesignation request and maintenance plan, by the UAQB. The projected inventories show that CO emissions are not estimated to exceed the 1993 attainment level during the time period 1993 through 2008 and, therefore, the SLC area has satisfactorily demonstrated maintenance. EPA has also extracted daily projected CO emissions for 2009 in the event that publication of this action in the **Federal Register** is delayed until early 1999. The additional projected CO daily emissions for 2007, 2008, and 2009 are provided in the Table I.–2 below:

TABLE I.–2—SUMMARY OF 1993 AND PROJECTED CO EMISSIONS IN TONS PER DAY FOR SLC

	1993	2007	2008	2009
Point Sources	0.55	1.81	1.84	1.87

TABLE I.–2—SUMMARY OF 1993 AND PROJECTED CO EMISSIONS IN TONS PER DAY FOR SLC—Continued

	1993	2007	2008	2009
Area Sources	14.65	15.60	15.67	15.74
Non-Road Mobile Sources	8.29	12.10	12.43	12.76
On-Road Mobile Sources	202.24	147.24	150.05	152.35
Total	225.73	176.75	179.99	182.72

C. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the SLC area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the SLC maintenance plan. In section IX.C.7.c.(5) and section IX.C.7.i.(3), the State commits to continue the operation of the CO monitors in the SLC area and to annually review this monitoring network and make changes as appropriate. Also, in section IX.C.7.i.(1), the State commits to prepare a comprehensive emission inventory of CO emissions every three years after the maintenance plan is approved by EPA. These inventories will be based on the most current Vehicle Miles Traveled (VMT) data, actual point source emissions, and area source emissions based on the most current population and industry growth information. The above commitments by the State, which will be enforceable by EPA following the final approval of the SLC maintenance plan SIP revision, are deemed adequate by EPA.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in Section IX.C.7.h of the maintenance plan, the contingency measures for the SLC area will be triggered by any of the following situations: (a) a future year verification emission inventory (see section IX.C.7.i.(1)) of *actual* emissions indicates a level greater than the 1993 attainment emissions (225.73 tons of CO/peak season day), (b) a second non-overlapping 8-hour average ambient CO measurement exceeds 9 ppm at a single monitoring site during a calendar year (i.e., a violation of the 8-hour CO standard), or (c) a second one-hour average ambient CO measurement exceeds 35 ppm at a single monitoring site during a calendar year (i.e., a violation of the 1-hour CO standard). The primary contingency measure is Alternative Commuting Options (ACO) and the secondary is an enhanced motor vehicle inspection and maintenance program (EI/M) or an equivalent I/M program. A more complete description of the triggering mechanisms and these contingency measures can be found in section IX.C.7.h of the maintenance plan.

EPA notes that both contingency measures have been partially implemented as of the beginning of 1998. The ACO contingency measure (UACR R307–11) was previously adopted by the State and was implemented in 1995 for Federal, State, and local government agencies with 100 or more employees at a worksite. The State has identified in the maintenance plan that R307–11 could be expanded to include *all* employers with 100 or more employees at a worksite. As a result of the Salt Lake and Davis Counties' ozone maintenance plan, Salt Lake County began implementing an improved I/M program for all of Salt Lake County in early 1998. This improved I/M program is not the equivalent of an enhanced I/M program, but it achieves greater reductions of CO emissions than the basic I/M program identified in the SLC CO maintenance plan. EPA notes that the additional CO emission reductions realized from the partial pre-implementation of the ACO regulation and the implementation of the improved I/M program were not included in the December 9, 1996, maintenance plan's projected emissions to demonstrate maintenance of the CO standard. The partial pre-implementation of contingency measures is consistent with EPA's August 13, 1993, guidance memorandum entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

Based on the above, EPA finds that the contingency measures provided in the State's maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of Utah has committed to submit a revised maintenance plan SIP revision eight years after redesignation. This provision and other State-triggered mechanisms (such as in response to revisions to the CO NAAQS or to take advantage of improved or more expeditious methods of maintaining the CO standard) for revising the maintenance plan are contained in section IX.C.7.i.(4) of the SLC maintenance plan.

II. Transportation Conformity

One key provision of EPA's conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budgets in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment area. The rule's requirements and EPA's policy on emissions budgets are found in the preambles to the November 24, 1993, and August 15, 1997, transportation conformity rules (58 FR 62193–96 and 62 FR 43780 et seq.) and in the sections of the rule referenced above.

The maintenance plan defines emissions budgets for each year between 1994 and 2006 (see Table IX.C.35 of the maintenance plan) and for 2016 (see Section IX, Part C.7.f.(2), page 110, of the maintenance plan) that the metropolitan planning organization (Wasatch Front Regional Council—WFRC) will use to demonstrate conformity. These year-by-year emissions budgets are presented below in Table II and EPA is approving them in this action. The plan also describes a safety margin (called the ''emissions credit'') for each year (1994 through 2006), which is the difference between total emissions from all sources in the attainment year and in each of those future years.

The State discusses the potential allocation of these identified year-by-year emission credits for the 1994 through 2006 time period in section (3), ''Emissions Credit Allocation'', on page 110, Section IX, Part C.7, of the maintenance plan. Section (3) states that ''The emissions credit or any portion of it may be allocated to any source category contributing to the inventory; i.e., area sources, non-road sources, or on-road sources mobile sources. The allocation of emission credits shall be made by order of the Utah Air Quality Board and shall not be inconsistent with this plan.''

This language is inconsistent with EPA's requirements for allocating the safety margin, and, thus, is not sufficient to allow the safety margin to be used for transportation conformity determinations or for other purposes. For example, EPA's longstanding interpretation is that the SIP itself must include some or all of the safety margin in the motor vehicle emissions budget before the safety margin may be used in transportation conformity determinations. *See* 58 FR 62195, November 24, 1993. Similarly, EPA has taken the position that conformity determinations may not trade emissions among SIP budgets for highway/transit versus other sources unless a SIP revision for the specific trade is submitted and approved by EPA or the SIP establishes appropriate mechanisms for such trading. *Id*. EPA's transportation conformity rule reflects these concepts at 40 CFR 93.124(a), (b), and (c).

The maintenance plan does not explicitly include the safety margin in the motor vehicle emissions budget or any other budget. (The one exception is for the year 2016. The 2016 budget is described in detail below.) Instead, the maintenance plan attempts to allow the Utah Air Quality Board to make an allocation of the safety margin to one or more of the budgets at some future date. This is not the explicit SIP allocation contemplated by EPA's conformity rule. Nor does this approach constitute an appropriate trading mechanism. Thus, under the language of the maintenance plan as it now stands, the safety margin may not be used for conformity determinations or any other purpose. All conformity determinations must demonstrate conformity with the emissions budgets in the maintenance plan as cited above and summarized in Table II below. The State may seek EPA approval of a SIP revision to allocate some or all of the available safety margin for transportation conformity, general conformity, or other purposes.

Consistent with the foregoing, and to avoid confusion, EPA is taking no action on Section IX, Part C.7.f.(3) of the maintenance plan.

For 2016, the State specifically included the safety margin in the on-road mobile source CO emissions budget, and thus, for 2016, the safety margin may be used for transportation conformity purposes. However, in calculating the emission budget for the year 2016, the State made mathematical errors. Section IX, Part C.7.f.(2) of the maintenance plan indicates the emission budget is 192.22 tons of CO per winter week day. The correct value is 192.06 tons of CO. To arrive at the 2016 budget value, the State subtracted the 2016 emissions projections for all source categories other than on-road mobile from the 1993 CO attainment year emissions inventory for all sources. For the 1993 CO total inventory value, the State used 225.42 tons of CO per winter week day, when it should have used 225.73 tons per day as reflected in Table IX.C.35 of the maintenance plan. For the 2016 emissions projections for all source categories other than on-road mobile, the State used 33.20 tons per day, when it should have used 33.67 tons per day as reflected in Section 3 of Volume 3 of the State's TSD. The Utah Division Air Quality corrected these mathematical errors by making a non-substantive change to the maintenance plan on July 14, 1998. These corrections became effective on July 27, 1998, and were received by EPA on August 12, 1998. As reflected in Table II below, EPA hereby approves the State's corrected emission budget for 2016 of 192.06 tons of CO per day. This budget, which, as noted above, specifically allocates the safety margin available in 2016 for transportation conformity purposes, may be used for transportation conformity determinations for the year 2016 and beyond.

The maintenance plan also states that, ''[a]n emission budget for the period extending from 2007 to 2016 has been established. (See TSD).'' As noted above, the maintenance plan clearly identifies emission budgets for years 1994 through 2006 and 2016. However, the maintenance plan does not clearly identify an emission budget for the period 2007 to 2015. The reference to the TSD is not helpful for two reasons. First, EPA's Transportation Conformity Rule requires that budgets be established by the SIP (see 40 CFR 93.118(a), (b), and (e)(4); 62 FR 43781, August 15, 1997), and EPA does not consider the TSD to be part of the SIP. Second, the TSD does not contain language that explicitly identifies an emission budget. It is not appropriate to infer an emission budget beyond the maintenance year unless the SIP explicitly identifies such an emission budget. See 58 FR 62195, November 24, 1993. Therefore, EPA is not approving any emission budget for the period 2007 through 2015, and any transportation conformity determinations for such years must be based on the 2006 emission budget. If the State wishes to establish an emission budget or budgets for the years 2007 through 2015, it may revise the maintenance plan and seek EPA's approval.

TABLE II.—ON-ROAD MOBILE SOURCE CO EMISSIONS BUDGETS FOR SLC

[In tons of CO per day]

Year	1993	1994	1995	1996	1997	1998	1999	2000
Budget	202.24	193.95	184.84	175.30	169.56	163.90	158.80	154.66
Year	2001	2002	2003	2004	2005	2006	....	2016
Budget	149.13	148.45	145.64	143.79	144.66	145.37	....	192.06

III. UACR R307–1–3.3

In his November 24, 1995, submittal of the redesignation request and maintenance plan for SLC, the Governor also included minor revisions to UACR R307–1–3.3, which contains requirements for new source review. These revisions made the rule's requirements applicable in both nonattainment and maintenance areas instead of just nonattainment areas. These revisions are acceptable to EPA and should help foster continued attainment of the CO standard in the SLC area. The above changes to UACR R307–1–3.3 were adopted by the UAQB October 4, 1995, and, with changes, December 6, 1995, and became State effective January 31, 1996.

IV. Final Action

In this action, EPA is approving the SLC carbon monoxide redesignation request, maintenance plan, and the revisions to UACR R307–1–3.3. However, as noted above, EPA is not taking any action on Section IX, Part C.7.f.(3) of the maintenance plan, ''Emissions Credit Allocation.''

EPA is publishing this action 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 adverse comments be filed. This rule will be effective March 22, 1999 without further notice unless the Agency receives adverse comments by February 22, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 22, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

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

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 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. Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements on state, local, or tribal governments. Thus, the rule does not impose any enforceable duties on state, local, or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

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 and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

D. Executive Order 13084: 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 affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12084 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. Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore, I certify that the approval of the redesignation request will not affect a substantial number of small entities.

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action approves a redesignation to attainment and 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, will result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 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 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 the publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 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 22, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 23, 1998.

Jack W. McGraw,

Acting Regional Administrator Region VIII.

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are 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 TT—UTAH

2. Section 52.2320 is amended by adding paragraph (c)(39) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(39) Revisions to the Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide as submitted by the Governor on December 6, 1996 (with minor mathematical corrections submitted by the Utah Division of Air Quality on August 12, 1998), excluding Section IX, Part C.7.f.(3) of the plan, ''Emissions Credit Allocation,'' as EPA is not taking any action on that section of the plan. UACR R307–1–3.3 Requirements for Nonattainment and Maintenance Areas—New and Modified Sources; as submitted by the Governor on November 24, 1995.

(i) Incorporation by reference.

(A) UACR R307–2–12, adopted by the Utah Air Quality Board on August 7, 1996 and September 4, 1996, effective November 1, 1996, as modified through a notice of nonsubstantive rule change dated July 14, 1998, effective July 27, 1998, to correct minor mathematical errors in Section IX, Part C.7.f.(2) of the Utah State Implementation Plan (SIP). UACR R307–2–12 incorporates by reference a number of provisions of the Utah SIP, only some of which are relevant to this rulemaking action. EPA's incorporation by reference of UACR R307–2–12 only extends to the following Utah SIP provisions and excludes any other provisions that UACR R307–2–12 incorporates by reference:

Section IX, Part C.7 (except for Section IX, Part C.7.f.(3)), Carbon Monoxide Maintenance Provisions for Salt Lake City, adopted by Utah Air Quality Board on August 7, 1996, and September 4, 1996, effective November 1, 1996, as modified by the nonsubstantive rule change noted above.

(B) UACR R307–1–3.3, a portion of Requirements for Nonattainment and Maintenance Areas—New and Modified Sources, as adopted by the Utah Air Quality Board on October 4, 1995, December 6, 1995, effective January 31, 1996.

(ii) Additional material.

(A) February 19, 1998, letter from Ursula Trueman, Director, Utah Division of Air Quality, Department of Environmental Quality to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, entitled ''DAQS–0188–98; Technical Support Documents—Ogden City and Salt Lake City CO Maintenance Plans.'' This letter confirmed that all the emission projections, contained in the technical support documents for both the Salt Lake City and Ogden City redesignation requests, were properly adopted by the Utah Air Quality Board in accordance with the Utah Air Quality Rules.

(B) Materials from Jan Miller, Utah Division of Air Quality, Department of Environmental Quality, received by Tim Russ, Air and Radiation Program, EPA Region VIII, displaying the minor mathematical corrections to the on-road mobile source emission budgets in Section IX, Part C. 7.f.(2) of the Salt Lake City CO Maintenance Plan. These nonsubstantive changes were made in accordance with the Utah Air Quality Rules and were effective July 27, 1998.

PART 81—[AMENDED]

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

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

2. In § 81.345, the table entitled ''Utah-Carbon Monoxide'' is amended by revising the entry for ''Salt Lake City Area'' to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Salt Lake City Area:				
Salt Lake County (part), Salt Lake City.	3–22–99	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 99–1259 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 64, No. 13

Thursday, January 21, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200 and –300 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This action would reduce the repetitive interval for one certain functional test. This proposal is prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from 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.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–247–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 3, 1995, the FAA issued AD 95–06–01, amendment 39–9171 (60 FR 13623, March 14, 1995), applicable to certain Boeing Model 747–200 and –300 series airplanes, to require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. That action was prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports indicating that several thrust reverser center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. This possible failure condition was not included in any previous safety assessment of the thrust reverser by the manufacturer. The returned CDU's had accumulated between 3,400 and 3,600 total flight hours. The cause of the low holding torque is a combination of cone brake wear, overrunning clutch wear, and grease contamination of the cone brake. Such a low torque condition could result in failure of the cone brake of the CDU, which could disable one of the fail safe features of the thrust reverser system that prevent deployment of a thrust reverser during flight.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, which describes procedures for a functional test of the CDU cone brake on each thrust reverser. The procedures for the functional test of the cone brake are substantially similar to those described in Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994 (which was referenced as the appropriate source of service information in AD 95–06–01). However, Boeing Service Bulletin 747–78A2166, Revision 1, specifies a shorter repetitive interval for the functional test (650 flight hours) than was specified in Boeing Alert Service Bulletin 747–78A2130 (1,300 flight hours).

The FAA previously reviewed and approved Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, which describes procedures for various inspections and functional tests of the thrust reverser control and indication system (including a functional test of the CDU cone brake), and correction of any discrepancy found.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–06–01 to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This proposed AD would reduce the repetitive interval for the functional test of the CDU cone brake. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Difference Between Latest Service Bulletin and This Proposed AD

Operators should note that Boeing Service Bulletin 747–78A2166, Revision 1, specifies that the functional test of the CDU cone brake described in that service bulletin is not necessary for Model 747–200 and –300 series airplanes that are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144 (or production equivalent). Boeing Model 747–200 and –300 series airplanes having line numbers 1061 and higher are equipped with such modified thrust reversers; therefore, the effectivity listing of Boeing Service Bulletin 747–78A2166, Revision 1, includes only Model 747 series airplanes equipped with General Electric Model CF6–80C2 engines having line numbers 679 through 1060 inclusive.

This AD, however, would require that the cone brake functional test be performed on Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 engines regardless of whether they are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144. The FAA has determined that an inspection interval of 1,000 hours time-in-service (which was required by AD 95–06–01) does not provide a sufficient level of safety for either the modified or unmodified thrust reversers, given the low holding torque condition that has been identified for the CDU cone brake.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The actions proposed by this AD would not add any additional economic burden on affected operators, other than the costs that are associated with repeating the functional test of the cone brake at reduced intervals (at intervals not to exceed 650 hours time-in-service rather than at intervals not to exceed 1,000 hours time-in-service). The current costs associated with AD 95–06–01 are reiterated in their entirety (as follows) for the convenience of affected operators.

The actions that are currently required by AD 95–06–01, and retained in this AD, take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,960, or $1,980 per airplane, per inspection/test cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9171 (60 FR 13623, March 14, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–247–AD. Supersedes AD 95–06–01, Amendment 39–9171.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines with Power Management Control engine controls, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–06–01

(a) Within 90 days after April 13, 1995 (the effective date AD 95–06–01, amendment 39–9171), perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service until the functional test required by paragraph (d) of this AD is accomplished.

(b) Within 9 months after April 13, 1995, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

(c) If any of the inspections and/or functional tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the functional test thereafter at intervals not to exceed 650 hours time-in-service. Accomplishment of such functional test constitutes terminating action for the repetitive test of the CDU cone brake required by paragraph (a) of this AD.

(e) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (e)(1) or (e)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

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

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

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

Issued in Renton, Washington, on January 14, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1307 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–80]

Proposed Modification of Class E Airspace; Shelbyville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Shelbyville, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, and a GPS SIAP to Rwy 19, have been developed for Shelbyville Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to modify the existing surface area by increasing the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–80, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–80.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Shelbyville, IN, to accommodate aircraft executing the proposed GPS Rwy 01 SIAP, and the GPS Rwy 19 SIAP, at Shelbyville Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL IN E5 Shelbyville, IN [Revised]

Shelbyville Municipal Airport, IN,
(Lat. 39°34′41″ N., long. 85°48′12″ W.)
Shelbyville VORTAC,
(Lat. 39°37′57″ N., long. 85°49′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Shelbyville Municipal Airport and within 1.8 miles each side of the Shelbyville VORTAC 340° radial extending from the 6.7-mile radius to 9.6 miles north of the VORTAC, excluding the airspace within the Mount Comfort, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on December 31, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1100 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 389

[Docket No. OST–99–5003; Notice No. 99–1]

RIN 2105–AC47

Fees and Charges for Special Services

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to revise 14 CFR Part 389 to bring the fees we charge to beneficiaries of certain economic, aviation-related licensing services in line with the costs incurred to provide those services. We also are proposing to remove or update obsolete provisions and organizational references included in the existing regulations.

DATES: Comments should be received no later than March 22, 1999.

ADDRESSES: Five (5) copies of any comments should be sent to Department of Transportation Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0002, and should refer to this docket. Acknowledgment of comments requires you to include a stamped, self-addressed postcard that the Docket clerk will time and date-stamp, and return.

FOR FURTHER INFORMATION CONTACT: Mr. James H. New or Mr. John D. Miller, Office of Planning and Special Projects, X–60, Department of Transportation, at the address above. Telephone (202) 366–4868.

SUPPLEMENTARY INFORMATION: Part 389 of Title 14 of the Code of Federal Regulations—Fees and Charges for Special Services—describes certain special services related to aviation economic proceedings that the Department provides to the public, and sets forth the fees and charges applicable to those services. This regulation has not been comprehensively updated since January 1983, when economic regulation of interstate and foreign air transportation was overseen by the Civil Aeronautics Board. Congress ''sunset'' the Board in January 1985, at which time the Board's residual functions were transferred to the Office of the Secretary, DOT. Today, some of the services identified in Part 389 are no longer provided, while several other services are provided but are not included. Further, most of the service processing fees prescribed in section 389.25(a) are not sufficient to recover our processing costs, while the prescribed fee in a few instances is too high. Because of these conditions, the General Accounting Office has recommended that the Department update the rule to reflect the services that we currently provide and to ensure that our fees are commensurate with the actual costs of providing those services. (GAO/RCED–96–8.)

Consequently, we have undertaken an analysis of the special services the Department provides in aviation economic proceedings, the fees currently in force for those services, and revisions that are needed for us to continue to provide services to the extent commensurate with our actual costs. A revised schedule of fees based on the results of our analysis is set forth in this proposed rule. Additionally, the rule would remove or update obsolete provisions and organizational references sprinkled throughout Part 389 and replace references to the Federal Aviation Act with references to Subtitle VII of Title 49 of the United States Code (Transportation).

Major Changes

The Department is proposing a major reorganization of the processing fee schedule contained in existing section 389.25(a). Of the 50 fee items listed in the schedule, we are proposing to eliminate 10 and to retain or revise the remaining 40. We also are proposing various new items, resulting in a net change from 50 to 76 schedule items. All items considered, there are 55 fee increases, 6 fee decreases, 9 instances in which the fee is unchanged and 6 instances in which an item is reserved for future use.

Under the proposed fee schedule, prospective or incumbent U.S. air carriers that apply for new or modified interstate certificate authority involving the use of ''small'' aircraft, defined as aircraft with 60 seats or less or with a maximum payload capacity of 18,000 pounds or less, are grouped with U.S. commuter air carriers with regard to the processing of initial applications for economic operating authority, amendments to initial applications, and/or applications for various exemptions or waivers from our regulations. Under the current schedule, the fees levied for these special services to U.S. certificated air carriers operating small aircraft are the same as the fees for U.S. certificated air carriers operating aircraft with more than 60 seats. Our analysis has determined that the costs to process applications involving the former are substantially lower than the costs for the latter, yet are similar to the processing costs for U.S. commuter air carrier authorizations.

We are also proposing a new, incremental fee in the case of applications for various international air service rights when the Department must conduct a comparative proceeding to distribute those rights among multiple applicants. This comparative process entails significantly higher costs to the Department than those incurred when a comparative proceeding is not necessary.

Additionally, except in the case of a treaty or an agreement, we are proposing to eliminate existing section 389.24, which authorizes the waiver of processing fees for foreign air carriers under certain circumstances. Currently, 235 foreign air carriers that have been granted U.S. economic operating authority qualify for this waiver, and the annual costs we incur to process service applications from such carriers amount to $248,000. We have concluded that it is neither necessary nor appropriate for the U.S. government to continue to absorb these costs.

User Fee Authority and Implementation

Our revised user charges are proposed under the authority of Title V of the Independent Offices Appropriations Act of 1952 (''IOAA''; 31 U.S.C. 9701). The IOAA provides that the head of a government agency may prescribe regulations, subject to policies prescribed by the President, establishing the charge for a service or ''thing of value'' provided by the agency. The statute states that each service or thing of value provided by an agency should be self-sustaining to the extent possible, and that each charge imposed to that end shall be fair and shall be based on (1) the costs to the government, (2) the value of the service or thing to the recipient, (3) public policy or interest served, and (4) and other relevant factors.

During the 1970's and early 1980's the IOAA was subjected to a series of judicial rulings to resolve issues of interpretation. Consequently, the principles of user charge implementation under the statute are well settled, and are embodied in the current version of Office of Management and Budget Circular A–25 (''User Charges,'' July 8, 1993). This Circular prescribes federal policy and guidelines for executive-branch and independent agencies to assess fees for government services and sets forth the procedures by which those agencies are to implement user fees. The principles and procedures enunciated in OMB Circular A–25 and relevant to this proposed rule are as follows (emphasis supplied by DOT):

1. It is the policy of the federal government to assess a user charge against each *identifiable recipient* for *special benefits* derived from federal activities *beyond those received by the general public.* When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the *full cost* to the federal government for providing the special benefit.

2. A *special benefit* will be considered to accrue and a user charge will be imposed when, for example, a government service (a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); (b) provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or (c) is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

3. User charges will be sufficient to recover the *full cost* to the federal government of providing the service, resource, or good when the government is acting in its capacity as sovereign. Full cost includes all *direct and indirect costs* to any part of the federal government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement; physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment; management and supervisory costs; and the costs of enforcement, collection, research, establishment of standards, and regulation.

4. *No charge* should be made for a service when the identification of the specific beneficiary is *obscure,* and the service can be considered *primarily* as benefiting broadly the general public. However, when the public obtains benefits *as a necessary consequence* of an agency's provision of special benefits to an identifiable recipient (*i.e., the public benefits are not independent of, but merely incidental to, the special benefits*), an agency *need not allocate any costs to the public* and should seek to recover from the identifiable recipient

the full cost to the federal government of providing the special benefit.

5. Each agency will identify the services and activities covered by this Circular, determine the extent of the special benefits provided, and apply the principles specified [herein] in determining cost. Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

Special Services Provided

The Secretary of Transportation is responsible, under Title 49 of the United States Code (''Transportation''), Subtitle VII (''Aviation Programs''), for the economic regulation of interstate and foreign air transportation. The Department's rules and regulations implementing the requirements of Subtitle VII are contained in Title 14 of the Code of Federal Regulations, Parts 200–399. In general, nearly all of the special services provided by the Department in the course of economic regulation involve the authority of a U.S. or a foreign air carrier to conduct revenue-producing interstate or foreign air transportation under the requirements of Subtitle VII and our implementing regulations.

Within the Office of the Secretary, the provision of special services is carried out under delegated authority by the Office of the Assistant Secretary for Aviation and International Affairs and the Office of the General Counsel. Both offices in turn are organized by sub-office and/or division, where the day-to-day processing of applications for special services takes place. The touchstone of the user charges set forth in this proposed rule is the direct labor time expended by these offices to process applications for aviation services on behalf of specific, identifiable recipients accorded a special benefit as a consequence of those services. Staff of both offices also spend time on policy development, analyses and other aspects of economic regulation that are not directly related to the provision of special benefits to identifiable recipients. That labor time is excluded from the scope of this rulemaking.

With respect to processing of applications for special services, the principal offices under the Assistant Secretary are the Office of International Aviation and the Office of Aviation Analysis. A third office, the Office of Aviation and International Economics, although primarily engaged in policy analysis, occasionally provides direct analytical support for applications requesting special services.

The Office of International Aviation receives, processes, and acts on or recommends the disposition of U.S. and foreign air carrier applications for economic authority to operate between the United States and foreign points. It also determines the disposition of all tariff filings by U.S. and foreign airlines. Within this office, the Pricing and Multilateral Affairs division reviews international fares and rates filed by U.S. and foreign air carriers to determine whether the proposed prices are consistent with public interest standards, Department rules and policy, and applicable international agreements. This division also reviews inter-carrier agreements, primarily fare and rate agreements filed by the International Air Transport Association, to determine whether they should be approved and given antitrust immunity. Division analysts also support licensing services provided by the U.S. Air Carrier Licensing division and the Foreign Air Carrier Licensing division. The former processes requests by U.S. airlines for authority to serve specific foreign markets and applications for transfer of international authority among U.S. air carriers. The latter handles all foreign air carrier applications (excepting Canadian air taxi registrations) for the authority to operate to the United States, including applications for foreign air carrier permits, exemptions, statements of authorization for charter, code-share and wet-lease operations, and related matters. In addition to these divisions, geographic aviation specialists for Europe, Asia-Pacific-Africa, and Western Hemisphere occasionally provide direct labor support for applications requesting special services.

Within the Office of Aviation Analysis, the provision of special services primarily involves the Air Carrier Fitness division and the Special Authorities division. Air Carrier Fitness evaluates the fitness of applicants for U.S. certificated and U.S. commuter air carrier operating authority, monitors the continuing fitness of certificated and commuter air carriers, evaluates requests for transfer of certificate or commuter authority, and processes applications for name changes or trade names, as well as applications for various exemptions and waivers from the Department's regulations. The Special Authorities division reviews charter prospectuses filed by tour operators, requests for waivers from charter regulations, and applications for operating authority from Canadian air taxi operators, foreign air freight forwarders, and overseas military personnel charter operators. On occasion, the Essential Air Service and Domestic Analysis division or the Economic and Financial Analysis division also expend direct labor time on processing applications for certain special services, such as requests for a change in mail rates or an exemption from the airport slot restrictions imposed by the High Density Rule.

Four offices of the Department's General Counsel are involved in the provision of special aviation services: Environmental, Civil Rights and General Law; International Law; Litigation; and Aviation Enforcement and Proceedings. Their chief responsibility is to ensure that proposed decisions on applications for special services are in compliance with applicable laws, regulations and international agreements. These offices also expend direct labor time when issues such as citizenship, bankruptcy, confidentiality or potential litigation arise in the course of processing applications.

Development of Fees

The following procedures were used to develop the user fees proposed in revised section 389.24(a) of the rule:

In accordance with the principles and procedures of OMB Circular A–25, we first examined the activities conducted by the Department to carry out economic regulation of interstate and foreign air transportation in order to identify those services that provide a special benefit to a specific, identifiable recipient. Where the beneficiary is obscure, or the nature of the benefit is indeterminate, or the beneficiary is primarily the public generally, the activity was excluded from further consideration. An example is an action by the Department to suspend or revoke an air carrier's economic authority to conduct interstate or foreign air transportation. Such action is taken primarily for the benefit of the public generally.

For those services identified as providing a special benefit to a specific identifiable recipient, the smallest practical unit for assigning a fee was determined in nearly all cases to be the application document submitted to the Department requesting a special service (a license, an exemption, a waiver, etc.). There are two exceptions: for certain substantive changes to an initial application for economic operating authority, the smallest practical unit is an ''amendment,'' and for certain requests involving antitrust immunity, the smallest practical unit is a ''resolution.''

We then analyzed the work flows and direct labor hours to process applications for special services. This analysis was based on (1) the knowledge and expertise of office and division supervisors, all of whom have many years of experience overseeing the processing of aviation service requests, and (2) data on the actual direct labor hours incurred to process a sample of 611 service applications completed during the period March 1997 through July 1998.

The results of the work-flow cost analysis were then applied to calculate direct labor costs, which are based on pay rates in effect as of February 1998 and include a standard allowance for fringe benefits (personal and sick leave, medical insurance, etc.) that is based on a government-wide average published by OMB (Circular A–76, Handbook, March 1996).

In addition to direct labor, indirect (overhead) costs of the Office of the Assistant Secretary were distributed to service applications based on rates applied at three levels: office-level supervision, office-level general and administrative, and general management and support. The overhead rates are based on actual costs for the fiscal year ending September 30, 1997, and exclude overhead items unrelated to the delivery of special services. In making overhead distributions, the rates were applied to actual direct labor costs. For certain overhead costs, such as office space, it was necessary to make a per capita allocation in order to derive a distribution rate. For the Office of the General Counsel, a single overhead rate was applied to the direct labor hours incurred.

Finally, fee amounts were assigned to individual special service items in accordance with these criteria:

If direct labor time data were available for a particular service, the fee was determined by dividing total direct and indirect costs by the number of applications completed. For administrative convenience and ease of payment, values below $100 are rounded to the nearest dollar and those above $100 are rounded to the nearest ten dollars.

If direct labor data were not available (i.e., no applications for the special service were completed during the cost-collection period), the fee was assigned based on the staff's analysis of the work flow to process an application for the special service.

If no direct labor data were available and the work-flow analysis identified no reason to assume costs have changed, the existing fee was retained.

If no cost data were available, the work-flow analysis identified no other basis to assign a fee, and no extant fee pertained, the service item was reserved in expectation of a future fee determination.

Appendix A of this Notice contains a summary of our fee calculations and an item-by-item justification of our proposed fee amounts, including the legal basis for the services provided to specific identifiable recipients, the nature of the special benefits accorded to those recipients, and the basis for the fee amounts proposed. In addition, we are placing in the docket a Supplement (''Service Job Costs'') to this Notice that (1) illustrates in detail how direct labor time was reported, how job costs were calculated, and how overhead rates were derived; and (2) lists the 611 applications for special services and their costs included in our work-flow cost analysis. The Department would like to have comment on whether any fee items have been overlooked or whether others should be deleted, in view of the methods used to calculate fees, as explained in this Notice and its Supplement.

U.S. Air Carriers Operating Small Aircraft

As noted earlier, our proposed fee schedule makes a distinction between the processing fees applicable to U.S. certificated air carriers (or applicants for certificate authority) that operate small as compared to large aircraft in interstate air transportation, and groups the former with the processing fees applicable to authorizations involving commuter air carrier operations. Our basis for making this distinction is the significantly lower processing costs associated with applications involving small aircraft, as explained in detail in Appendix A, items 9 through 12 and items 24 through 34. The Department would like to receive comments on the reasonableness and fairness of grouping small-aircraft certificated air carriers with commuter air carriers for purposes of processing fees.

Additional Fee for Comparative Proceedings

We also invite comments on the reasonableness and fairness of our proposed incremental user charge for applications for international air service rights when a comparative proceeding is required to distribute those rights among multiple applicants. Again, the basis for this proposed fee is the additional cost incurred to conduct a comparative proceeding, as explained in detail in Appendix A, items 52 through 57.

Elimination of Waiver of Foreign Air Carrier Processing Fees

Current section 389.24 provides that a foreign air carrier, or such carriers, if from the same country, acting jointly, may apply for a waiver of the requirements to pay processing fees, based on reciprocity for U.S. air carriers contained in the requirement of their home governments, or as provided in a treaty or agreement with the United States. Further, once a waiver has been granted for a specific country, no further waiver applications need be filed for that country.

To date, 76 countries and the 12-nation Air Afrique Consortium have been granted interim or final waivers from the requirement to pay all or some of the processing fees contained in current section 389.25. These waivers in all cases are based on reciprocity: a foreign carrier is relieved from the Department's processing fees only if the aviation authority of its home country does likewise for U.S. carriers. However, none of the waivers we have granted are required by treaty or other formal agreement with the U.S. government and all are revocable at the Department's discretion. Eliminating the waiver provision and revoking existing waivers means that once this proposed rule takes effect, all foreign air carriers would be required to pay the applicable fee contained in revised section 389.24. We recognize that this action could spur the governments of foreign nations whose carriers have benefitted from U.S. fee waivers to reciprocate by revoking the fee relief they have granted to U.S. carriers and requiring U.S. carriers to pay processing fees in the future. The Department would like to receive comments on its proposed elimination of the foreign air carrier waiver provision.

Our reason for proposing to eliminate the foreign air carrier waiver provision is its cost to the Department. In fiscal year 1997, the Foreign Air Carrier Licensing Division received 1,163 applications from foreign carriers requesting various forms of operating authority. Of the total received, 710 applications, or 61 percent, were covered by fee waivers. We estimate that the processing of these applications entails approximately 2,300 labor hours at a total cost to the Department of $248,000.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the proposed revisions and has determined that they are not ''significant'' within the meaning of Executive Order 12866. The revisions will not 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. The revisions will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor do they raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

DOT Regulatory Policies and Procedures

The proposed revisions are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies; rather, they are being made solely for the purposes of updating the fees charged to the beneficiaries of special aviation-related services provided by the Department to help offset the costs of providing the services, and of eliminating obsolete requirements and correcting out-of-date references in the rule.

Executive Order 12612 (Federalism)

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''), and the Department has determined the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Analysis

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed changes would result in a net increase in the processing fees applicable to small entities. The new fee schedule, however, would not have a significant economic impact on small entities and would not affect a substantial number of small entities.

The Small Business Administration suggests that, for aircraft services, ''small'' represents impacted businesses with 1,500 or fewer employees. For purposes of this rulemaking, small entities are defined as certificated air carriers, commuter air carriers, air taxis, and air charter operators that (1) have 1,500 or fewer employees and/or (2) operate aircraft with 60 seats or less or 18,000 pounds maximum payload or less. Departmental records show that 106 certificated air carriers, 49 commuter air carriers, approximately 2,800 active air taxis operators, and approximately 250 charter operators meet this definition of a small entity.

Many of these small entities would be unaffected by the changes to the fee schedule. The actual economic impact on any individual small entity, however, would depend on the number and type of filings submitted to implement particular operational decisions. The survey of applications from March 1997 to July 1998 used to calculate the new fees indicated that only a small portion of small entities filed applications for aviation economic proceedings. Moreover, air taxis, the single largest class of small entities, are exempt from certain regulatory requirements, including the requirement to obtain certificated authority. Several of the fees that we propose to increase are related to certificated authority. Thus, unless they choose to obtain certificates, the largest class of small entities would not be affected by most of the proposed fee increases.

Of those small entities that would be affected, most would experience only modest fee increases because most items for which the survey of applications suggest that relatively large numbers of applications are filed would have only modest fee increases. For instance, the fee for Schedule Item 34, Application for approval of amendment to commuter air carrier registration under 14 CFR Part 298, would increase from $0 to $5.

National Environmental Policy Act

The Department has also assessed the proposed revisions for the purpose of the National Environmental Policy Act. The revisions will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

This rule does not impose any collection of information requirements requiring review under the Paperwork Reduction Act of 1995. The proposed rule contains no new reporting, recordkeeping, or compliance requirements, but only sets forth the processing fees applicable to existing regulatory requirements.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Lists of Subjects in 14 CFR Part 389

Administrative practice and procedure, Reporting and recordkeeping requirements.

Proposed Rule

For the reasons set forth above, it is proposed that Title 14, Chapter II of the Code of Federal Regulations be amended as follows:

PART 389—[REVISED]

1. Part 389 is revised to read as follows:

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Subpart A—General Provisions

Subpart B—Fees Related to the Availability of Public Records and Documents

Subpart C—Filing and Processing License Fees

Authority: 31 U.S.C. 9701, 49 U.S.C. Chapters 401, 461.

Subpart A—General Provisions

§ 389.1 Policy and scope.

Pursuant to the provisions of 31 U.S.C. 9701 as implemented by Office of Management and Budget Circular A–25, revised July 8, 1993, the Department sets forth in this part the special aviation-related services made available by the Department and prescribes the fees to be paid for these and various other services.

Subpart B—Fees Related to the Availability of Public Records and Documents

§ 389.10 Public disclosure of information.

Part 7 of the Office of Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR part 7)

Subpart C—Filing and Processing License Fees

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records with the Department by non-government parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under subpart W of part 221 of this chapter, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare. For purposes of this subpart, the term document and record also includes those filings made electronically under process set at the DOT Dockets website.

(c) For the purpose of this subpart, small aircraft means aircraft with 60 seats or less or with a maximum payload capacity of 18,000 pounds or less.

§ 389.21 Payment of fees.

(a) Any paper document or record for which a filing fee is required by § 389.24 shall be accompanied by either:

(1) A check, draft, or postal money order, payable to the Department of Transportation, in the amount prescribed in this part, or

(2) A request for waiver or modification of the filing fee.

(b) The filing fee required by § 389.24, Item 57, concerning carrier/gateway selection from among multiple applicants, shall be payable upon submission of an applicant's first filing subsequent to the Department's notice that a comparative proceeding is necessary.

(c) Except for tariff records filed under § 221.500 of this title, documents and records filed electronically under process set at the DOT Dockets website shall be accompanied by a certification that the filing fee for that document has been or will be paid in accordance with procedures set at the DOT Dockets website.

(d) Where a document relating to a single transaction or matter seeks multiple authorities or relief and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required. Where a document relating to more than one transaction or matter seeks multiple authorities or relief, the required filing fee shall be determined by combining the highest fees for each transaction or matter. For purposes of this paragraph, a specific number of charters or inclusive tours described in one application will be regarded as a single transaction or matter.

(e) No fee shall be returned after the document has been filed with the Department, except as provided in §§ 389.23 and 389.26.

§ 389.22 Failure to make proper payment.

(a)(1) Except as provided in § 389.23, documents (except tariff publications) which are not accompanied by filing fees shall be returned to the filing party, and such documents shall not be considered as filed by the Department.

(2) Except as provided in § 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

(3) Except as provided in § 389.23, documents and records filed electronically not accompanied by the required certification in § 389.21(b) shall not be processed. In addition, electronic filers not making payment in accordance with the procedures set at the DOT Dockets website shall be notified that unless payment is made within 10 days from such notification, the document or record shall be deemed to have been dismissed or withdrawn.

(b) The filing fee tendered by a filing party shall be accepted by the Department office to which payment is made, subject to post audit by the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, and notification to the filing party within 30 days of any additional amount due. Not more than 5 days after receipt of the notification, the determination of the Chief, Accounting Division, may be appealed to the Chief Financial Officer, who has been delegated authority by the Department to decide such appeals. The filing party may submit to the Department a petition for review of the Chief Financial Officer's decision pursuant to § 385.30 of this chapter, and proceedings thereon will be governed by subpart C of part 385 of this chapter.

(c)(1) The amount found due by the Chief, Accounting Division, shall be paid within 10 days of notification except that:

(i) If that decision is appealed to the Chief Financial Officer, the amount due shall be paid within 10 days after the Chief Financial Officer notifies the filing party that he has affirmed or modified the decision of the Chief, Accounting Division; and

(ii) If the decision of the Chief Financial Officer is appealed to the Department, the amount due shall be paid within 10 days after the Department notifies the filing party that it has affirmed or modified the staff decision.

(2) If the amount due is not paid, the document (except a tariff publication) shall be returned to the filing party along with the fee tendered, and such document shall be deemed to have been dismissed or withdrawn.

§ 389.23 Application for waiver or modification of fees.

(a) Applications may be filed asking for waiver or modification of any fee paid under this subpart. Each applicant shall set forth the reasons why a waiver or modification should be granted, and by what legal authority.

(b) Applications asking for a waiver or modification of fees shall be sent to the Director, Office of International Aviation, or Director, Office of Aviation Analysis, as appropriate, and shall accompany the document filed. Applicants may appeal the decision of the appropriate Director to the Assistant Secretary for Aviation and International Affairs under § 385.30 of this chapter. When no petition for review is filed with the Assistant Secretary, or when the Assistant Secretary reviews the appropriate Director's decision, if the amount found due is not paid within 10 days after receipt of notification of the final determination, the document shall be returned to the filing party.

(Approved by the Office of Management and Budget under control number 3024–0071)

§ 389.24 Schedule of processing fees.

(a) Application—filing fees.

Code and application document	$Fee [1]
Initial Authority—U.S. Certificated Air Carriers (large aircraft):	
1 Interstate scheduled only	7,030
2 Interstate charter only	7,030
3 All-cargo only	7,030
4 Foreign scheduled only	7,200

Code and application document	$Fee [1]
5 Foreign charter only	7,100
6 Interstate and foreign scheduled	7,360
7 Interstate and foreign charter	7,270
8 Amendment to initial application, items 1–7 inclusive	[2] 1,760
Initial Authority—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (small aircraft):	
9 Interstate scheduled only	3,050
10 Foreign scheduled only	3,150
11 Interstate and foreign scheduled	3,310
12 Amendment to initial application, items 9–11 inclusive	[2] 760
Exemptions, Waivers, Transfers—U.S. Certificated Air Carriers (large aircraft):	
13 Pendente Lite Exemption	1,900
14 Waiver to advertise, take reservations, issue tickets or receive payments before effective authority is issued	1,900
15 Waiver of revocation-for-dormancy rule	1,370
16 Notice of intent to resume service when resumption is 30 days or more after cessation of service	4,750
17 Notice of intent to resume service when resumption is less than 30 days after cessation of service	1,370
18 Removal of restriction on authority not involving a change from small to large aircraft	1,650
19 Removal of restriction on authority when a change from small to large aircraft is involved	4,750
20 Change name/trade name with reissuance of certificate	500
21 Trade name registration	240
22 Transfer of certificate: New ownership and/or management	7,730
23 Certificate transfer: Intra-corporate reorganization	650
Exemptions, Waivers, Transfers, Amendments—U.S. Commuter Air Carriers and U.S. Certificated Carriers (small aircraft):	
24 Pendente Lite Exemption	280
25 Waiver to advertise, take reservations, issue tickets or receive payments before effective authority is issued	280
26 Waiver of revocation-for-dormancy rule	280
27 [RESERVED.]	....
28 Notice of intent to resume service	280
29 [RESERVED.]	....
30 Change name/trade name with reissuance of certificate	250
31 Trade name registration	65
32 Transfer of certificate or commuter authority: New ownership and/or management	4,070
33 [RESERVED.]	....
34 Amendment to commuter registration	5
Authority for Charter, Air Taxis, Foreign Tour and Foreign Freight Forwarder Operations:	
35 Public charter prospectus	15
36 Waiver of public charter regulations	15
37 Foreign tour operator registration	16
38 U.S. air taxi registration	15
39 Canadian charter air taxi registration	15
40 Foreign air freight forwarder authority	19
41 Amendment to authorization, items 35–40 inclusive	5
Authorizations, Amendments, Exemptions, Waivers—Foreign Air Carriers:	
42 Foreign air carrier permit, initial or renewal	1,550
43 Exemption—More than 10 flights	400
44 Amendment to application, item 42 or 43	215
45 Exemption—10 or fewer flights	120
46 Special authorization, part 375	110
47 Foreign aircraft permit, part 375	180
48 Charter statement of authorization	350
49 Special authority, part 216	410
50 Emergency cabotage	330
51 Approval of foreign carrier schedule change per bilateral agreement	90
International Route Authority, Exemptions, Frequencies, Charter Allocations:	
52 New, renewal or amendment of certificate authority, carrier selection not required	650
53 New, renewal or amendment of exemption authority, carrier selection not required	480
54 New allocation of frequencies in limited-entry markets, carrier selection not required	630
55 Renewal or frequency allocation in limited-entry markets, carrier selection not required	230
56 Charter allocations for aviation operations into foreign countries, carrier selection not required	180
57 Additional charge if carrier/gateway selection is required, items 52–56 inclusive	[3] 3,490
58 Route or frequency transfer	4,990
Code-Share, Wet-Lease, Transborder and Intermodal Authorizations:	
59 Statement of code-share authorization	1,100
60 Statement of wet-lease authorization	300
61 [RESERVED.]	
62 Approval under Part 222 for foreign carriers to transport international cargo from a U.S. gateway point to an interior U.S. point via trucking, per bilateral agreement	290
Regulation of Tariffs and Rates:	
63 IATA Resolutions, To and/or from U.S.	[4] 84
64 IATA Resolutions, Foreign-to-foreign	[4] 5
65 IATA Resolutions, Technical change	15
66 Exemption to carry traffic not otherwise authorized under tariff in effect	53
67 Permission to file tariffs on less than statutory notice	40
68 Approval of waiver/modification of tariff regulations	12
69 Provide certified copies of tariffs upon request	240

Code and application document	$Fee [1]
Other Exemptions and Authorizations:	
70 Slot exemption at slot-controlled airport	4,340
71 Confidential treatment of documents	380
72 Approval of agreements/antitrust immunity	1,080
73 [RESERVED.]	
74 [RESERVED.]	
75 Service mail rate petition	420
76 Overseas military personnel charter authority	665

[1] Fee is per application except as noted. If application involves multiple items, highest fee applies.
[2] Per amendment.
[3] Payable upon submission of first filing subsequent to DOT notice that a comparative proceeding is necessary.
[4] Per resolution.

(b) Electronic tariff filing fees. The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled records, shall be 5 cents per record; *Provided:* That no fee shall be assessed for those records submitted to the Department pursuant to § 221.500(b)(1) of this chapter.

§ 389.25 Special rules for tariff page filings.

(a) Tariffs issued by carriers. The filing fee for tariff pages filed by U.S. air carriers will be charged even if the tariff includes matters involving participating foreign air carriers. It will also be charged if the tariff is issued by a foreign air carrier and includes matters involving participating U.S. air carriers. The fee will not be charged for a blank loose-leaf page unless it cancels matters in the preceding issue of the page.

(b) Tariffs issued by publishing agents. (1) If the tariff is issued for one or more air carriers exclusively, the fee will be charged for each page.

(2) If the tariff is issued for one or more air carriers and one or more foreign air carriers, the fee will be charged for each page, except for those pages that the issuing agent states contain only:

(i) Matters pertaining exclusively to foreign air carriers that have been granted a waiver, or

(ii) Changes in matters pertaining to foreign air carriers that have been granted a waiver and that are included on the same page with other matters that are reissued without change.

(3) The fee will not be charged for a blank loose-leaf page unless it cancels matters in the preceding page.

(4) No fee will be charged when two pages are published back-to-back, one page is not subject to the fee under paragraph (b)(2) of this section, and the page on the reverse is issued without substantive change.

(5) The fee will be charged for two loose-leaf pages containing a correction number check sheet unless all other pages of the tariff are exempt from the fee.

§ 389.26 Refund of fee.

(a) Any fee charged under this part may be refunded in full or in part upon request if the document for which it is charged is withdrawn before final action is taken. Such requests shall be filed in accordance with § 389.23.

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Department's cost in providing the service. The application shall be filed with the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, and shall contain: the amount paid, the date paid, and the category of service.

(Approved by the Office of Management and Budget under control number 3024–0071)

Issued in Washington DC, on January 13, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–62–P

Appendix A

FEE COMPUTATION SUMMARY

Item	Current Fee	APPLICATION (JOB) PROCESSING COSTS: DIRECT LABOR: Apps [1]	Hours	Wages	Fringes	Total	OVERHEAD: Office Operating	Office G & A	General Mngmt.	Total	TOTAL COSTS	COST PER JOB	PROPOSED FEE [2]
1	850												**7,030**
2	850	5	398.4	15,342	7,264	22,606	2,445	5,812	4,273	12,530	35,136	7,027	**7,030**
3	670												**7,030**
4	900	Item 5 + 1.06 hrs. additional processing time @ $90.28 per hr.										7,197	**7,200**
5	600	4	325.7	12,403	5,873	18,275	1,976	4,698	3,454	10,128	28,404	7,101	**7,100**
6	1,750	Item 4 + 2.0 hrs. additional processing time @ $83.25 per hr.										7,363	**7,360**
7	1,450	Item 5 + 2.0 hrs. additional processing time @ $83.25 per hr.										7,267	**7,270**
8	425/200 [3]	25% of "basic" fee (see Items 1-3).										1,757	**1,760** [4]
9	670/850	8	301.0	10,679	5,057	15,736	1,690	4,033	2,953	8,676	24,412	3,051	**3,050**
10	900	Items 9 + 1.06 hrs. additional processing time @ $90.28 per hr.										3,147	**3,150**
11	1,750	Item 10 + 2.0 hrs. additional processing time @ $83.25 per hr.										3,314	**3,310**
12	425	25% of "basic" fee (see Item 9).										763	**760** [4]
13	280/360 [5]	4	96.8	3,343	1,583	4,927	521	1,255	910	2,686	7,613	1,903	**1,900**
14	280/360 [5]												**1,900**
15	280/360 [5]	4	68.0	2,410	1,141	3,551	375	90548	65567	1,935	5,4862	1,371	**1,370**
16	280 [6]	3	172.9	6,258	2,963	9,221	977	3,347	1,707	5,031	14,252	4,751	**4,750**
17	280 [6]	Same as Item 15.											**1,370**
18	None	2	41.5	1,450	686	2,136	227	545	398	1,170	3,306	1,653	**1,650**
19	None	Same as Item 16.											**4,750**
20	56	2	13.0	446	211	657	67	165	118	350	1,007	503	**500**
21	56	3	9.4	322	152	474	48	120	85	253	727	242	**240**
22	290/255 [5]	2	195.3	6,769	3,205	9,973	1,070	2,550	1,862	5,483	15,456	7,728	**7,730**
23	290/255 [5]	3	24.3	857	406	1,262	130	320	227	676	1,939	646	**650**
24	280	Current fee retained.											**280**
25	280	Current fee retained.											**280**
26	280	Current fee retained.											**280**
27	280 [6]												**Reserved.**
28	280 [6]	Same as Item 26.											**280**
29	None												**Reserved.**
30	56	2	6.4	228	108	336	32	82	56	169	505	253	**250**
31	56	4	3.2	117	55	172	17	42	30	89	261	65	**65**
32	None	3	157.3	5,372	2,544	7,916	830	2,006	1,451	4,288	12,204	4,068	**4,070**
33	None												**Reserved.**
34	None	25	2.5	59	28	87	9	22	17	48	135	5	**5**
35	39	52	16.9	334	158	492	73	133	97	304	796	15	**15**
36	39	Same as Item 35.											**15**
37	10	3	1.5	21	10	31	3	8	60	17	48	16	**16**
38	8	Same as Item 39.											**15**
39	30	14	6.7	93	44	137	15	35	26	77	214	15	**15**
40	11	1	0.6	8	4	12	1	3	2	7	19	19	**19**
41	None	30	4.8	67	32	99	11	26	19	55	155	5	**5**
42	760	1	14.0	584	277	861	232	267	190	689	1,549	1,549	**1,550**
43	360	3	11.5	448	212	661	178	205	146	529	1,190	397	**400**

FEE COMPUTATION SUMMARY

Item	Current Fee	APPLICATION (JOB) PROCESSING COSTS											PROPOSED FEE [2]
		DIRECT LABOR					OVERHEAD				TOTAL COSTS	COST PER JOB	
		Apps [1]	Hours	Wages	Fringes	Total	Office Operating	Office G & A	General Mngmt.	Total			
44	215											Current fee retained.	**215**
45	77	1	1.2	47	22	69	19	21	15	55	124	124	**120**
46	12	1	1.0	42	20	62	17	19	14	50	112	112	**110**
47	25	6	9.5	414	196	610	165	189	135	488	1,098	183	**180**
48	8	19	63.8	2,535	1,200	3,735	979	1,139	800	2,918	5,653	350	**350**
49	37	2	8.7	324	153	477	116	140	95	350	827	414	**410**
50	360	4	13.8	509	241	749	196	228	160	584	1,333	333	**330**
51	None	24	19.0	850	403	1,253	338	389	276	1,003	2,256	942	**94**
52	900	17	122.6	4,280	2,026	6,306	1,575	1,876	1,294	4,745	11,051	650	**650**
53	360	87	416.3	16,034	7,592	23,626	6,011	7,095	4,930	18,036	41,663	479	**480**
54	None	6	38.1	1,479	700	2,79	527	639	435	1,600	3,779	630	**630**
55	None	8	20.4	711	337	1,048	255	307	208	770	1,818	227	**230**
56	None	6	10.8	405	192	596	152	180	126	458	1,055	176	**180**
57	None	24	924.0	36,429	17,249	53,678	13,743	16,313	11,532	41,588	95,266	3,490	**3,490**
		Marginal Cost: Select (item 57, $3,969 Avg.) - (No Select, items 52-56, $479 Avg.) =											
58	None	1	52.4	1,991	943	2,933	676	833	552	2,061	4,995	4,994	**4,990**
59	8	25	248.1	10,737	5,084	15,821	3,846	4,615	3,134	11,594	27,415	1,097	**1,100**
60	8	16	53.9	1,818	861	2,679	699	815	571	2,084	4,763	298	**300**
61	None												**Reserved.**
62	10	3	10.3	331	157	488	132	151	108	391	879	293	**290**
63	61	20	174.3	7,128	3,375	10,502	2,557	3.075	2,090	7,722	18,225		**84** [7]
		Adjustment to per resolution basis: $18,225 total cost / 216 total resolutions =											
64	61	33	21.3	733	347	1,080	291	335	238	864	1,944	59	**5** [7]
		Adjustment to per resolution basis: $1,944 total cost / 417 total resolutions =											
65	None	23	4.8	133	63	195	53	61	43	156	352	15	**15**
66	53											Current fee retained.	**53**
67	12	95	65.3	1,442	682	2,124	573	659	468	1,700	3,824	40	**40**
68	12											Current fee retained.	**12**
69	2+0.15/pg	6	20.8	548	260	808	218	250	178	646	1,454	242	**240**
70	None	4	207.3	7,571	3,585	11,156	1,251	2,868	2,093	6,212	17,368	4,342	**4,340**
71	None	2	9.5	339	161	500	48	121	846	253	753	376	**380**
72	1,080											Current fee retained.	**1,080**
73	None												**Reserved.**
74	None												**Reserved.**
75	420											Current fee retained.	**420**
76	665											Current fee retained.	**665**

[1] Apps = Applications (jobs) completed.
[2] Proposed fee is per application unless noted otherwise. For administrative convenience, computed fees below $100 are rounded to the nearest $1 and those above $100 are rounded to the nearest $10 in setting proposed amounts.
[3] If foreign scheduled or charter, respectively.
[4] Proposed fee is per amendment.
[5] If foreign air transportation, latter figure applies.
[6] Assumes request for waiver of 45-day advance notice requirement (14 CFR 204.7).
[7] Proposed fee is per resolution.

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Justifications of Proposed User Fees

The following sections set forth the legal authority for the special services included in our proposed fee schedule, the nature of the special benefits those services provide to identifiable private recipients, and our rationale for the fee amounts we propose. As described earlier, proposed amounts are based on our analysis of the work processes and costs required to deliver special services to specific identifiable recipients, direct-labor time and cost data on special services for a sample of more than 600 applications that we completed during the period March 1997–July 1998, and the related indirect (overhead) costs distributable to the processing of those applications. When available, applications cost data are applied to compute the proposed fee, defined as the total cost incurred for a specific service divided by the total number of applications completed. If no cost data are available for a particular service (i.e., no applications for that service were completed during the cost-collection period), and we have no other analytic basis to justify a change, the current fee is retained. If a particular type of service has neither current cost data nor an extant fee, no fee is proposed and a schedule item is reserved. In accordance with federal user-charge policy (OMB Circular A–25, par. 8), we intend to continue cost collection and analysis as needed to revisit the fee schedule at least biennially and to revise or update fee items as warranted by changes in our costs or the special services we provide.

Initial Authority—U.S. Certificated Air Carriers (Large Aircraft): Schedule Items 1–8

Our analysis of the processes involved to perform certification services determined that there is a significant difference in processing costs between those prospective air carriers whose applications entail the operation of ''large'' aircraft (more than 60 seats or more than 18,000 pounds maximum payload) and those whose applications involve ''small'' aircraft (60 seats or less or 18,000 pounds maximum payload or less). Accordingly, although the statutory basis and nature of special benefits are identical in both instances, we are proposing separate certification categories and fees based on aircraft size, with schedule items 1–8 applied to applications involving large aircraft.

Schedule Item 1. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1). Section 41101(a)(1) of Title 49 of the United States Code (''the Statute'') provides that an air carrier may engage in interstate scheduled air transportation of persons, property, or mail only if it has been issued a certificate by the Department of Transportation. Section 41102(b)(1) of the Statute requires the Department to find such an air carrier ''fit, willing, and able'' to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15) of the Statute. A fee for processing an application for this authority is warranted because the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing interstate scheduled air transportation.

Schedule Item 2. Initial application for certificate authorizing interstate charter air transportation under 49 U.S.C. 41102(a)(3). Section 41101(a)(2) of the Statute provides that an air carrier may engage in interstate charter air transportation of persons, property, or mail only if it has been issued a certificate by the Department. Section 41102(b)(2) requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15). A fee for processing an application for this authority is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing interstate charter air transportation.

Schedule Item 3. Initial application for certificate authorizing interstate all-cargo transportation under 49 U.S.C. 41103. Section 41103 of the Statute provides that the Department may issue to a U.S. citizen an all-cargo air transportation certificate authorizing it to engage in [interstate] all-cargo air transportation. This section requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized. A fee for processing an application for all-cargo authority is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing all-cargo air transportation.

Our analysis of the work flow and time required to process the foregoing applications determined that the resources expended are essentially the same for each type of initial application. For this reason, we are proposing the identical fee for each type, based on the following cost data:

Direct Labor	$22,650.80
Overhead	15,530.44
Total Cost	35,136.24
Applications processed	5
Cost per application	7,027.25
Proposed fee, Items 1–3: per application	$7,030.00

Our analysis also found that there are measurable differences in processing costs depending on whether an applicant requests initial authority to provide (1) Foreign scheduled compared with interstate scheduled service; (2) foreign charter compared with interstate charter service; (3) both interstate and foreign scheduled service; and (4) both interstate and foreign charter service. Accordingly, we are proposing a different fee for each type as explained below.

Schedule Item 4. Initial application for certificate authorizing foreign scheduled air transportation under 49 U.S.C. 41102(a)(1). Section 41101(a)(1) of the Statute provides that an air carrier may engage in foreign scheduled air transportation of persons, property, or mail only if it has been issued a certificate by the Department. Section 41102(b)(1) of the Statute requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15) of the Statute. Further, under section 41102(b)(2), the Department is required to find that the proposed foreign air transportation is consistent with the public convenience and necessity and, under section 41102(d), to submit each decision authorizing an application to engage in foreign air transportation to the President for approval in accordance with section 41307. A fee for processing an application under these provisions of the Statute is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing foreign scheduled air transportation.

We did not process any applications under this schedule item during the cost-collection period. However, our analysis determined that foreign scheduled requires greater processing time than foreign charter (see cost data below) because of the need to evaluate compliance with extant bilateral agreements and to prepare the requisite implementing language for the Department's final order authorizing the requested operations. The proposed fee is therefore derived as follows:

Cost per application, Foreign Charter, Item 5 (see below)	$7,100.89
Additional processing cost (1.06 hrs. at $90.28 per hr.)	95.70

Cost per application	7,196.59
Proposed fee, Item 4: per application	7,200.00

Schedule Item 5. Initial application for certificate authorizing foreign charter air transportation under 49 U.S.C. 41102. Section 41101(a)(2) of the Statute provides that an air carrier may engage in foreign charter air transportation only if it has been issued a certificate by the Department, while section 41102(b)(2) requires the Department to find such an air carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15). Further, under section 41102(b)(2), the Department is required to find that the proposed foreign air transportation is consistent with the public convenience and necessity and, under section 41102(d), to submit each decision authorizing an application to engage in foreign air transportation to the President for approval in accordance with section 41307. A fee for processing an application under these provisions of the Statute is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing foreign charter air transportation.

The proposed fee for this service is determined as follows:

Direct Labor	$18,275.10
Overhead	10,128.44
Total Cost	28,403.54
Applications processed	4
Cost per application	7,100.89
Proposed fee, Item 5: per application	7,100.00

Schedule Item 6. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1) AND foreign scheduled air transportation under 49 U.S.C. 41102(a)(1). Although the basic evaluation process is the same for dual and single-authority applications, the former entails a marginally greater amount of time (2 hours) to analyze the additional service proposal and to process a second authorization. Thus, the proposed fee for this schedule item is derived as follows:

Cost per application, Foreign Scheduled only, Item 4	$7,196.59
Additional processing cost (2 hrs. at $83.25 per hr.)	166.50
Cost per application	7,363.09
Proposed fee, Item 6: per application	7,360.00

Schedule Item 7. Initial application for certificate authorizing interstate charter air transportation under 49 U.S.C. 41102(a)(3) AND foreign charter air transportation under 49 U.S.C. 41102. As with item 6, item 7 involves marginally greater time for processing a second authority. The proposed fee is derived in a similar fashion thusly:

Cost per application, Foreign Charter only, Item 5	$7,100.89
Additional processing cost (2 hrs. at $83.25 per hr.)	166.50
Cost per application	7,267.39
Proposed fee, Item 7: per application	7,270.00

Schedule Item 8. Amendment to initial application, schedule items 1–7 inclusive. Under section 302.5 of its procedural regulations, the Department requires that if an applicant for certificate authority or for all-cargo authority modifies its application substantially, it must file an amendment to the application. An amendment may involve a substantial change to one of the four major elements—ownership/citizenship, management, finances, or compliance disposition—examined by the Department as predicates to approval of the requested authorization, and necessitates significant additional processing effort. A fee for processing such amendments is warranted since the applicant is seeking the special benefit of the Department's consideration of a major change to one or more of the basic elements affecting the applicant's qualifications to conduct revenue-producing air transportation.

Our work-flow analysis determined that each of the four basic elements of a fitness evaluation entails a comparable amount of processing time. Accordingly, the proposed fee for an amendment [1] to an initial application is set at 25 percent of the basic application fee, as follows:

Initial application cost, Items 1–3	$7,027.25
× 25% additional cost =	1,756.81
Proposed fee, Item 8: per amendment	1,760.00

[1] We traditionally have made a distinction between amendments and "supplements." As noted above, an amendment involves a substantive change by the applicant to one of the four basic elements of its initial application—ownership/citizenship, management, finances, or compliance disposition. A supplement, by contrast, involves additional details or elaborative material on the basic elements rather than a substantive change, and is normally submitted at the Department's request rather than the applicant's initiative. We have never imposed a fee for supplements and do not propose to begin doing so now.

Initial Authority—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (Small Aircraft): Schedule Items 9–13

As discussed earlier, we are proposing a separate certification category for applications involving aircraft of 60 seats or less or a maximum payload of 18,000 pounds or less because those applications entail significantly lower processing costs. We also have determined that the time to process applications for commuter authority is essentially the same as that for interstate scheduled service involving small aircraft, and therefore are proposing to combine the two authorities under a single schedule item. The statutory basis and nature of special benefit for commuter authority are presented below. Those for certificated authority involving small aircraft are the same as presented earlier for authorizations involving large aircraft.

Schedule Item 9. Initial application for (1) scheduled passenger air service ("commuter") authority under 49 U.S.C. 41738, or (2) certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft.

Commuter authority. Section 40109(c) authorizes the Department to exempt any person or class of persons from certain provisions of the Statute, such as the requirement to obtain a certificate under section 41101(a). In addition, section 40109(f) provides that an air carrier is exempt from the requirement to obtain a certificate under section 41101(a) if it operates small aircraft and complies with the Department's liability insurance regulations and other requirements. Further, section 41738 of the Statute provides that before an air carrier may provide scheduled air transportation to an eligible place (as defined in section 41736), it must be found to be a U.S. citizen and to be fit, willing, and able to perform the service. A fee for processing an application for this commuter air carrier authority is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing scheduled air transportation to an eligible place.

Certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. See justification of schedule item 1, supra. Our proposed fee for schedule item 9 is based on the following cost data:

Direct Labor	$15,735.90
Overhead	8,675.60
Total Cost	24,411.50
Applications processed	8

Cost per application	3,051.44
Proposed fee, Items 9, 10: per application	3,050.00

Schedule Item 10. Initial application for certificate authorizing foreign scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. See justification of schedule item 4, supra.

As in the case of foreign scheduled certificated authority involving large aircraft, there is an incremental cost arising from the need to evaluate compliance with bilateral agreements and to prepare implementing language. Our proposed fee is calculated as follows:

Cost per application, Interstate Scheduled only, Item 9	$3,051.44
Additional processing cost (1.06 hrs. at $90.28 per hr.)	95.70
Cost per application	3,147.14
Proposed fee, Item 10: per application	3,150.00

Schedule Item 11. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1) AND foreign scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. An application seeking both interstate and foreign scheduled authority likewise requires marginally greater cost to process dual authorizations. Our proposed fee:

Cost per application, Foreign Scheduled only, Item 10	$3,147.14
Additional processing cost (2 hrs. at $83.25 per hr.)	166.50
Cost per application	3,313.64
Proposed fee, Item 11: per application	3,310.00

Schedule Item 12. Amendment to initial application, schedule items 9–12 inclusive. Finally, as with applications involving large aircraft, an amendment to an initial application for commuter authority or certificated authority involving small aircraft typically entails a substantial change in one of the basic elements evaluated by the Department (ownership/citizenship, management, finances or compliance disposition), and requires approximately one-fourth as much time to process as the initial submission. Our proposed fee is therefore:

Initial application cost, Item 9	$3,051.44
× 25% additional cost =	762.86
Proposed fee, Item 12: per amendment	760.00

Exemptions, Waivers, Transfers—U.S. Certificated Air Carriers, Large Aircraft: Schedule Items 13–23

Schedule Item 13. Application for an exemption from the provisions of 49 U.S.C. 41102 or 41103 in order to conduct air transportation operations before the authority for such operations has been granted (pendente lite exemption). Section 40109(c) of the Statute provides that the Department may grant an air carrier applicant an exemption to engage in air transportation operations without first having obtained a certificate in accordance with section 41102 or section 41103. The Department must determine that a grant of such authority is in the public interest, analyze the qualifications of the applicant, and assess certain consumer protection actions the applicant is required to take in order to be granted a pendente lite exemption. A processing fee for this exemption is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the required certificate authority.

Schedule Item 14. Application for a waiver of the provisions of 14 CFR 201.5 in order to advertise, take reservations, issue tickets, or receive payments before the underlying operating authority is granted. Section 201.5 of Title 14 of the Code of Federal Regulations (''the regulations'') provides that an applicant for air carrier certificate authority may not advertise or take reservations for its proposed air service until its application has been approved by the Department, and that the applicant may not issue tickets or receive payments for its proposed air service until its authority has become effective. Section 40109(c) of the Statute, however, authorizes the Department to grant exemptions or waivers from the regulations. Before granting a waiver, the Department must determine that a grant of such authority is in the public interest, analyze the applicant's qualifications, and assess certain consumer protection actions the applicant is required to take. A fee for processing this application for a waiver is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the underlying authority for those operations.

Our analysis of the services of schedule items 13 and 14 determined that both entail essentially the same amount of processing time. Our proposed fee is therefore the same for each item and is based on the following cost data:

Direct Labor	$4,926.53
Overhead	2,686.07
Total Cost	7,612.60
Applications processed	4
Cost per application	1,903.15
Proposed fee, Items 13, 14: per application	1,900.00

Schedule Item 15. Application by a certificated air carrier for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7. Section 204.7 of the Department's regulations provides that if a carrier has been awarded a certificate under section 41102 or 41103 of the Statute, but does not institute the air transportation operations for which it was found fit within one year of the date of its fitness determination, the carrier's authority may be revoked for reasons of dormancy. Similarly, if the carrier institutes air transportation operations but subsequently ceases conducting all of the operations for which it was found fit, its authority is automatically suspended and subject to revocation if the carrier does not recommence operations within one year. If the carrier requires additional time beyond the one-year period, it must file an application for a waiver of the revocation-for-dormancy provisions of section 204.7, together with updated fitness information. A fee for processing an application for a waiver of the revocation for dormancy rule is warranted because the Department must assess the carrier's progress in becoming operational and because the carrier is seeking the special benefit of Departmental action to avert revocation of its authority to conduct revenue-producing air transportation operations.

Our proposed fee for this item is determined as follows:

Direct Labor	$3,550.50
Overhead	1,935.46
Total Cost	5,485.90
Applications processed	4
Cost per application	1,371.48
Proposed fee, Item 15: per application	1,370.00

Schedule Item 16. Notice by a certificated air carrier pursuant to 14 CFR 204.7 of its intent to resume air transportation operations following a cessation of those operations *more than 30 days* after the cessation. Section 204.7 of the regulations provides that if a carrier holding a certificate under section 41102 or 41103 of the Statute ceases conducting all of the air transportation operations for which it was found fit, willing, and able, it may not resume those operations until its fitness is redetermined by the Department. Under our rules, if the carrier desires to re-institute air transportation operations, it must file a notice of intent to do so along with updated fitness information. A fee for processing a notice of intent to resume service is justified because the Department must re-evaluate the carrier's fitness, including any changes (which often are substantial) that have been made by the carrier since it ceased operations, and because the carrier is seeking the special benefit of the Department's authorization to re-engage in revenue-producing air transportation operations.

Our proposed fee for this item is based on the following:

Direct Labor	$9,220.69
Overhead	5,030.99
Total Cost	14,251.58
Applications processed	3
Cost per application	4,750.56
Proposed fee, Item 16: per application	4,750.00

Schedule Item 17. Application of notice by a certificated air carrier pursuant to 14 CFR 204.7 of its intent to resume air transportation operations following a cessation of those operations *less than 30 days* after the cessation. The regulatory basis and nature of special benefit warranting a user charge for this item are the same as those for item 16 above. However, the fitness issues associated with an applicant that has only recently ceased operations normally are less complex and require less analysis and processing effort because fewer changes are likely to have been made in the areas requiring a fitness review. Our work-flow analysis determined that the time required to process a notice to resume service in less than 30 days is essentially the same as that for a waiver-of-dormancy application, item 15 above. We therefore are proposing the same fee for this item, $1,370 per application.

Schedule Item 18. Application by an air carrier holding a certificate under 49 U.S.C. 41102 or 41103 for the removal of a restriction on its certificate authority when the removal does *not* involve a change from small to large aircraft. An air carrier may apply to have the Department lift a restriction contained in the Terms, Conditions, and Limitations attached to its certificate. Such an application requires the Department to conduct a continuing fitness review under section 41110(e) of the Statute to determine that the carrier will remain fit, willing, and able if the restriction is removed. Since the applicant is seeking the special benefit of being granted broader revenue-producing authority by the Department, a processing fee is warranted. Our proposed fee is determined as follows:

Direct Labor	$2,136.26
Overhead	1,169.68
Total Cost	3,305.94
Applications processed	2
Cost per application	1,652.97
Proposed fee, Item 18: per application	1,650.00

Schedule Item 19. Application by an air carrier holding a certificate under 49 U.S.C. 41102 or 41103 for the removal of a restriction on its certificate authority when the removal *does* involve a change from small to large aircraft. The statutory basis and nature of special benefit warranting a user charge for this schedule item are the same as for item 18 above. Application processing costs, however, are substantially higher because a change from small to large aircraft has a major impact on the air carrier's management and financial fitness. Although we did not complete any applications for this schedule item during the cost-collection period, our work-flow analysis determined that the process for evaluating a removal of a restriction involving a change from small to large aircraft is essentially the same as the evaluation process for a notice to resume service more than 30 days after cessation (item 16, *supra*). As in the latter case, the applicant under this schedule item typically undergoes substantial changes in its management team and financial structure that necessitate the Department's scrutiny. Thus, the proposed fee for item 19 is the same as for item 16, $4,750 per application.

Schedule Item 20. Application by a certificated air carrier under 14 CFR Part 215 to register a name or trade name involving the reissuance of its certificate. Part 215 of the Department's regulations provides that a carrier holding a certificate under section 41102 or 41103 of the Statute may not hold itself out as a provider of air transportation service in any name that has not been registered with the Department. A name-change application requires the Department to (1) search its records for any other air carriers with the same or a similar name, (2) advise the applicant accordingly so that it may, in turn, notify any such similarly named carriers of its intent to register the name, and (3) reissue the carrier's certificate in the new name. A fee for this service is warranted since the carrier is seeking the special benefit of being authorized to engage in revenue-producing air transportation operations under a different name or trade name than previously authorized.

Our proposed fee for this schedule item is as follows:

Direct Labor	$656.52
Overhead	350.23
Total Cost	1,006.75
Applications processed	2
Cost per application	503.38
Proposed fee, Item 20: per application	500.00

Schedule Item 21. Application for trade name registration (certificate reissuance not required). While the legal basis and nature of special benefit for this item are the same as for item 20 above, the proposed fee is substantially lower because only a notice of the registration must be issued, resulting in materially lower processing costs:

Direct Labor	$473.95
Overhead	252.98
Total Cost	726.93
Applications processed	3
Cost per application	242.31
Proposed fee, Item 21: per application	240.00

Schedule Item 22. Joint application under 49 U.S.C. 41105 for the transfer of interstate certificate authority. Section 41105 of the Statute provides that a certificate issued under section 41102 or 41103 of the Statute may be transferred only upon the Department's finding that the transfer is in the public interest.[2] Moreover, the Department must certify to the Congressional committees having jurisdiction over matters of commerce that the transfer will not have an adverse effect on the viability of the carriers involved, competition in the domestic airline industry, or the U.S. trade position in international air transportation. A fee is warranted for approval of a certificate transfer because, in addition to these findings, the Department must determine that the transferee is fit to conduct the operations authorized by the certificate to be transferred and, further, because the applicants are seeking the special benefit of the Department's approval of an action needed by (1) the certificate transferee to engage in the revenue-producing air transportation authorized by the certificate and (2) the transferor so that it may realize any compensation provided for in the transfer agreement.

[2] This transfer of interstate certificate authority is distinct from the transfer of foreign route/frequency authority. See item 58, below, for the latter.

Our proposed fee for this item is based on the following:

Direct Labor	$9,973.37
Overhead	5,482.51
Total Cost	15,455.88
Applications processed	2
Cost per application	7,727.94
Proposed fee, Item 22: per application	7,730.00

Schedule Item 23. Application to 49 U.S.C. 41105 involving an intra-corporate reorganization only (e.g., reincorporation in a different state with no changes of ownership or management). In contrast to item 22 above, an air carrier in this instance is seeking the special benefit of the Department's approval of a comparatively minor change to the certificated authority that enables revenue-producing air transportation, and the certificate transfer triggered by the carrier's intra-corporate reorganization entails a less extensive fitness review. The proposed fee for item 23 is therefore substantially lower than for item 22, and is based on the following cost data:

Direct Labor	$1,262.38
Overhead	676.29
Total Cost	1,938.67
Applications processed	3
Cost per application	646.22
Proposed fee, Item 23: per application	650.00

Exemptions, Waivers, Transfers—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (Small Aircraft): Schedule Items 24–34

As in the case of initial applications, we are proposing to group commuter air carriers and certificated air carriers using small aircraft into a separate category for exemptions, waivers and transfers. The structure of this category is similar to that of items 13–23 above regarding authorizations involving large aircraft.

Schedule Item 24. Application for an exemption from the provisions of 49 U.S.C. 41738 or 41102 to conduct scheduled air transportation operations before the authority for such operations has been granted (pendente lite exemption). Section 40109(c) of the Statute authorizes the Department to grant an air carrier applicant an exemption to engage in air transportation operations without first having obtained a certificate or commuter authorization. The Department must determine that a grant of such authority is in the public interest, analyze the qualifications of the applicant, and assess certain consumer protection actions the applicant is required to take in order to be granted a pendente lite exemption. A processing fee for this exemption is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the required certificate or commuter authority.

Schedule Item 25. Application for a waiver of the provisions of 14 CFR 201.5 in order to advertise, take reservations, issue tickets, or receive payments before the underlying operating authority is granted. Section 201.5 of the Department's regulations provides that an applicant for commuter air carrier or certificate authority may not advertise or take reservations for its proposed air service until its application has been approved by the Department, and that the applicant may not issue tickets or receive payments for its proposed air service until its authority has become effective. Section 40109(c) of the Statute, however, authorizes the Department to grant exemptions or waivers from the regulations. Before granting a waiver, the Department must determine that a grant of such authority is in the public interest, analyze the applicant's qualifications, and assess certain consumer protection actions the applicant is required to take. A fee for processing this application for waiver is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the underlying authority for those operations.

Schedule Item 26. Application for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7 Section 204.7 of the Department's regulations provides that if a carrier has been awarded commuter authority under section 41738 of the Statute, or certificate authority under section 41102, but does not institute the air transportation operations for which it was found fit within one year of the date of its fitness determination, the carrier's authority may be revoked for reasons of dormancy. Similarly, if the carrier institutes air transportation operations but subsequently ceases conducting all of the operations for which it was found fit, its authority is automatically suspended and subject to revocation if the carrier does not recommence operations within one year. If the carrier requires additional time beyond the one-year period, it must file an application for a waiver of the revocation-for-dormancy provisions of section 204.7, together with updated fitness information. A fee for processing an application for a waiver of the revocation-for-dormancy rule is warranted because the Department must assess the carrier's progress in becoming operational and because the carrier is seeking the special benefit of Departmental action to avert revocation of its authority to conduct revenue-producing air transportation operations.

No applications under schedule items 25, 26 or 27 were processed during our cost-collection period, and we have no other basis on which to propose a change to the fees currently in force or to assume that fee costs have changed. Accordingly, the current fee of $280 per Application is retained for each item.

Schedule Item 27. [Reserved.]

Schedule Item 28. Application of notice pursuant to 14 CFR 204.7 of the intent to resume air transportation operations following a cessation of those operations. Section 204.7 of the regulations provides that if a carrier holding commuter authority under section 41738 of the Statute, or a carrier holding certificate authority under section 41102, ceases conducting all of the air transportation operations for which it was found fit, willing, and able, it may not resume those operations until its fitness is redetermined by the Department. Under our rules, if the carrier desires to re-institute air transportation operations, it must file a notice of intent to do so along with updated fitness information. A fee for processing a notice of intent to resume service is justified because the Department must re-evaluate the carrier's fitness, including any changes (which often are substantial) that have been made by the carrier since it ceased operations, and because the carrier is seeking the special benefit of the Department's authorization to re-engage in revenue-producing air transportation operations.

No applications from commuter air carriers or certificated air carriers operating small aircraft were processed under this item during our cost-collection period. However, our analysis determined that the time required to process a notice to resume service is essentially the same as that for a waiver-of-dormancy application, item 26 above. We therefore are proposing the same fee for item 28, $280 per Application.

Schedule Item 29. [Reserved.]

Schedule Item 30. Application under 14 CFR Part 215 to register a name or trade name involving the reissuance of a certificate or commuter authorization. Part 215 of the Department's regulations provides that a carrier holding commuter authority under section 41738 of the Statute, or certificate authority under section 41102, may not hold itself out to the public as a provider of air transportation service in any name that has not been registered with the Department. A processing fee for a name or trade name registration application requires the Department to (1) search its records for any other air carriers with the same or a similar name, (2) advise the applicant accordingly so that it may, in turn, notify any such similarly named carriers of its intent to register the name, and (3) reissue the carrier's authority in the new name. A fee for this service is warranted since the carrier is seeking the special benefit of being authorized to engage in revenue-producing commuter or certificated air carrier operations under a different name or trade name than previously authorized.

Our proposed fee for this item is based on the following:

Direct Labor	$335.72
Overhead	169.31
Total Cost	505.03
Applications processed	2
Cost per application	252.52
Proposed fee, Item 30: per application	250.00

Schedule Item 31. Application under 14 CFR Part 215 and section 298.36 requesting the Department to accept a registration of a name. This schedule item is akin to item 30 above in terms of its regulatory basis and nature of special benefit, but is significantly less costly to process because only a notice of the registration must be issued. Our proposed fee therefore is lower, and is based on:

Direct Labor	$171.86
Overhead	88.65
Total Cost	260.51
Applications processed	4
Cost per application	65.13
Proposed fee, Item 31: per application	65.00

Schedule Item 32. Joint application under 49 U.S.C. 41105 for the transfer of certificate or commuter air carrier authority. Section 41105 of the Statute provides that a certificate authority issued under section 41102 of the Statute or a commuter authority issued under section 41738 may be transferred only upon the Department's approval that the transfer is in the public interest.[3] Moreover, the Department must certify to the Congressional committees having jurisdiction over matters of commerce that the transfer will not have an adverse effect on the viability of the carriers involved, competition in the domestic airline industry, or the U.S. trade position in international air transportation. A fee is warranted for approval of a certificate or commuter authorization transfer because, in addition to these findings, the Department must determine that the transferee is fit to conduct the operations authorized by the certificate or commuter authority to be transferred and the applicants are seeking the special benefit of the Department's approval of an action needed by (1) the transferee to engage in the revenue-producing air transportation authorized and (2) the transferor so that it may realize any compensation provided for in the transfer agreement.

Our proposed fee for this item is based on the following:

Direct Labor	$7,916.28
Overhead	4,287.70
Total Cost	12,203.98
Applications processed	3
Cost per application	4,067.99
Proposed fee, Item 32: per application	4,070.00

Schedule Item 33. [Reserved.]

Schedule Item 34. Application for approval of amendment to commuter air carrier registration under 14 CFR Part 298. Section 298.23 of the Department's regulations requires a commuter air carrier to submit an amendment to its registration form (OST Form 4507) within 30 days of undergoing any change (*e.g.*, in location, operations conducted, or aircraft fleet) that would make obsolete the information currently on file with the Department. A processing fee for the filing of an amended OST Form 4507 is warranted since the carrier is seeking the special benefit of the Department's approval of changes it has undergone to continue to engage in revenue-producing commuter operations.

Our proposed fee for this schedule item is based on:

Direct Labor	$87.25
Overhead	48.75
Total Cost	136.00
Applications processed	25
Cost per application	5.44
Proposed fee, Item 34: per application	5.00

Authority for Charter, Air Taxi, Foreign Tour and Foreign Freight Forwarder Operations: Schedule Items 35–41

Schedule Item 35. Application for acceptance of a public charter prospectus. Section 41104 of the Statute provides that the Department may prescribe a regulation restricting the marketability, flexibility, accessibility or variety of charter air transportation provided under a certificate or order issued under section 41102 of the Statute, but only to the extent required by the public interest. Parts 380, 207, 208 and 212 of the Department's regulations require the filing of a prospectus describing the economic and consumer protections that the applicant must provide to members of the public purchasing its charter transportation. A processing fee for a public charter prospectus is warranted since the applicant, a direct air carrier or indirect air carrier, is seeking the special benefit of the Department's authorization to conduct revenue-producing air charter service.

The proposed fee for this item is as follows:

Direct Labor	$491.81
Overhead	304.17
Total Cost	795.98
Applications processed	52
Cost per application	15.31
Proposed fee, Item 35: per application	15.00

Schedule Item 36. Application for waiver of charter regulations. Under section 380.3(e) of the public charter regulations, the Department can approve an application submitted by a public charter operator or a direct air carrier for a waiver of the provisions of the charter regulations, provided that a waiver is found to be in the public interest. A fee for processing an application for this waiver is justified since the applicant is seeking the special benefit of the Department's consent to be relieved of certain filing or other requirements in the conduct of revenue-producing charter operations.

No applications under this schedule item were processed during the cost-collection period. However, we have concluded that the current fee of $39 is too high in light of our proposed fees for charter-type authorizations generally (items 35, 37–40). For this reason, we are proposing to reduce the fee from $39 to $15 per application.

Schedule Item 37. Application for approval of foreign charter operator registration. Under section 380.60 of the public charter regulations, foreign charter operators desiring to organize public charter group transportation originating in the United States must register with, and obtain approval of, the Department, including a determination by the Department whether effective reciprocity exists with the homeland of the applicant. The registration application, which must describe the ownership of the company, is held for 28 days, during which time any person may file an objection. A processing fee is warranted since the

[3] This transfer of interstate certificate or commuter authority is distinct from the transfer of foreign route/frequency authority. See item 58, below, for the latter.

applicant is seeking the special benefit of the Department's approval to advertise, organize, provide, sell and/or offer U.S.-originating public charters.

The proposed fee for this item is as follows:

Direct Labor	$30.90
Overhead	17.25
Total Cost	48.15
Applications processed	3
Cost per application	16.05
Proposed fee, Item 37: per application	16.00

Schedule Item 38. Application for U.S. air taxi registration. Under part 298 of the Department's regulations, any company proposing to operate small aircraft (60 seats or less than or 18,000-pounds payload or less) in on-demand air service must first register with the Department and file evidence of effective liability insurance coverage meeting the requirements of Part 205. Acceptance of the registration relieves theses operators from certain provisions and requirements of Subtitle VII of the Statute, including the requirement to obtain a certificate under section 41102. Since the applicant seeks the special benefit of the Department's approval to conduct revenue-producing air taxi operations, a processing fee is warranted.

In October 1997, the responsibility for processing applications for air taxi registrations was transferred from the Office of the Secretary to the Federal Aviation Administration. As a consequence, no data on the cost to process applications under this schedule item were collected. Nevertheless, we are proposing that the same fee established below for Canadian charter air taxi registrations—$15 per Application—also apply to applications for U.S. air taxi registration. The registration requirements and process involved in both types of applications are quite similar, with the exception that applications for U.S. air taxi registration, unlike those for Canadian charter air taxis, are not required to be held by the Department for a public-comment period of 28 days. The cost to the Department of this ''holding'' requirement is not material, however, since few, if any, objections are filed.

Schedule Item 39. Application for Canadian charter air taxi registration. Under Part 294 of the Department's regulations, a Canadian charter air taxi operator seeking authority to operate between Canada and the United States must file a registration request with the Department accompanied by evidence of effective liability insurance coverage. The regulation exempts these operators from certain provisions of Subtitle VII of the Statute and establishes rules applicable to their operations in the United States. Because the applicant seeks the special benefit of the Department's authorization to operate small aircraft across the Canadian border into the United States for revenue-generating purposes, a processing fee is justified.

Our proposed fee for this item:

Direct Labor	$137.20
Overhead	76.59
Total Cost	213.79
Applications processed	14
Cost per application	15.27
Proposed fee, Item 39: per application	15.00

Schedule Item 40. Application for approval of foreign air freight forwarder registration. Under Part 297 of the Department's regulations, a foreign air freight forwarder must file and receive approval to engage indirectly in interstate or foreign air transportation of property. Acceptance of the application also relieves carriers from certain provisions of Subtitle VII of the Statute. If the registration is approved, the applicant is permitted to arrange for the transportation of property from the point of origin to the point of destination using the services of direct air carriers. The processing fee is warranted since the applicant is seeking the special benefit of the Department's approval of its registration to engage in revenue-producing activity.

Our proposed fee for this schedule item is as follows:

Direct Labor	$11.95
Overhead	6.67
Total Cost	28.62
Applications processed	1
Cost per application	18.62
Proposed fee, Item 40: per application	19.00

Schedule Item 41. Application for amendment to registration, items 36–40 inclusive. Under section 380.25 (c) and (d) of the Department's regulations, a public charter operator may request that an amendment be made to its original prospectus to add or cancel flights, or to change flight dates, origin or destination points, or the direct air carrier, securer or depository bank. Further, under section 380.65, a foreign charter operator must notify the Department of any change in its operations or ownership and amend its registration accordingly. Likewise, under sections 294.22 and 298.23, a Canadian charter air taxi and U.S. air tax operator, respectively, must notify the Department of changes in the information contained in its registration and, under section 297.94, a foreign air freight forwarder must file and have approved changes to its registration. A processing fee for these various types of amendments is warranted since, in each instance, the operator is seeking the special benefit of the Department's approval of changes to the authority enabling the operator to continue to engage in revenue-producing operations.

Our analysis of these various types of amendment applications determined that they entail essentially the same processes. Accordingly, we are proposing that the same fee be applied to each type based on the following cost data:

Direct Labor	$99.21
Overhead	55.37
Total Cost	154.58
Applications processed	30
Cost per amendment	5.15
Proposed fee, Item 41: per application	5.00

Authorizations, Amendments, Exemptions—Foreign Air Carriers: Schedule Items 42–51

Schedule Item 42. Application for an initial, or for renewal of a previously authorized, foreign air carrier permit under 49 U.S.C. 41301. Section 41301 of the Statute requires a foreign air carrier to have a permit from the Department to engage in air transportation operations to a point or points in the United States or its possessions. Section 41302 of the Statute requires the Department to find such a foreign air carrier fit, willing, and able to provide the foreign air transportation to be authorized by the permit, and to find that it has been designated by the government of its country to provide the foreign air transportation under an agreement with the United States Government, or that the foreign air transportation to be provided under the permit will be in the public interest. A fee for processing an application permit is warranted since the foreign air carrier is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation service to a U.S. point.

A foreign air carrier permit may be issued for a specified term that will require renewal, which normally involves a re-determination of carrier fitness and a processing effort comparable to that for an initial authorization. Because an applicant for renewal seeks the special benefit of continuing its authority to conduct revenue operations in foreign air transportation, a processing fee is warranted.

Our proposed fee for an initial permit or for renewal of a previously authorized permit is based on the following:

Direct Labor	$860.56
Overhead	688.71
Total Cost	1,549.27
Applications processed	1
Cost per application	1,549.27
Proposed fee, Item 42: per application	1,550.00

Schedule Item 43. Application by foreign air carrier for exemption from the provisions of 49 U.S.C. 41301. Section 40109(c) of the Statute provides that the Department may grant a foreign air carrier applicant an exemption to conduct (more than 10) flights to a U.S. point or points without its first having obtained a foreign air carrier permit as required by section 41301. A processing fee for an application for this exemption is justified because the foreign air carrier is seeking the special benefit of the Department's temporary authorization to conduct revenue-producing air transportation to a U.S. point in circumstances where obtaining a foreign air carrier permit would take too long or otherwise be inappropriate.

Our proposed fee for this item is based on the following:

Direct Labor	$660.85
Overhead	528.86
Total Cost	1,189.71
Applications processed	3
Cost per application	396.57
Proposed fee, Item 43: per Application	400.00

Schedule Item 44. Amendment by a foreign air carrier of either its application for a permit or its application for an exemption to conduct more than 10 flights. If an applicant for a foreign air carrier permit under section 41301 or for an exemption under section 40109(c) of the Statute modifies its application substantially, it must file an amendment to such application. Such amendments trigger significant additional processing time, and a fee to cover processing costs is warranted since the applicant receives the special benefit of additional or different authority for revenue-producing operations, while saving the time and expense that a new application would entail.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $215 per Application is retained.

Schedule Item 45. Application by foreign air carrier for an exemption from the provisions of 49 U.S.C. 41301 to conduct ten or fewer flights. Section 40109(c) of the Statute provides that the Department may grant a foreign air carrier an exemption from the need to obtain a foreign air carrier permit as required by section 41301 of the Statute in order to conduct flights to a U.S. point or points. Department rules (14 CFR 302.401 *et seq.*) provide for simplified application procedures for certain exemptions of 10 or fewer flights. A fee for processing such an exemption application is justified because the foreign air carrier is seeking the special benefit of the Department's authorization to temporarily conduct revenue-producing air transportation to a U.S. point and to defer the time and financial expenditures required to obtain a foreign air carrier permit.

Our proposed fee for this item is based on the following:

Direct Labor	$69.09
Overhead	55.29
Total Cost	124.38
Applications processed	1
Cost per application	124.38
Proposed fee, Item 45: per Application	120.00

Schedule Item 46. Application for a special authorization under 14 CFR Part 375. Section 41703 of the Statute and section 375.70 of the regulations provide that the Department may authorize particular flights that are not within an applicant's other authority and not appropriately the subject of an exemption under 49 U.S.C. 40109. The Department must determine that the proposed operations are fully consistent with the applicable law, that the applicant's homeland grants a similar privilege with respect to U.S. operators, and that the proposed operation is in the U.S. public interest. A fee in connection with an application for such a special authorization is warranted because the applicant is seeking the special benefit of permission to engage in an air operation of value that is not otherwise authorized.

Our proposed fee for this item is based on the following:

Direct Labor	$62.34
Overhead	48.89
Total Cost	112.23
Applications processed	1
Cost per application	112.23
Proposed fee, Item 46: per Application	110.00

Schedule Item 47. Application for a foreign aircraft permit under 14 CFR Part 375. Section 41703 of the Statute and section 375.40 of the Department's regulations state that commercial air operations utilizing foreign civil aircraft may be undertaken in the U.S. only if a permit issued by the Department is carried aboard the aircraft. A fee to offset the costs of processing a permit application is warranted since the applicant is seeking the special benefit of the Department's authorization to operate a foreign aircraft in air commerce in the United States.

Our proposed fee for this item is based on the following:

Direct Labor	$609.84
Overhead	488.06
Total Cost	1,097.90
Applications processed	6
Cost per application	182.98
Proposed fee, Item 47: per Application	180.00

Schedule Item 48. Application for foreign carrier charter statement of authorization under 14 CFR Part 212. Foreign air carrier permits issued under 49 U.S.C. 41302 require that charter flights must be conducted in accordance with 14 C.F.R. Part 212. Part 212 provides that certain charters require prior approval in the form of a Statement of Authorization, which the Department grants if it finds that the charters will be in the public interest. A fee to defray processing costs is warranted since the applicant is seeking the special benefit of authority to conduct revenue-producing operations in foreign air transportation.

Our proposed fee for this item is based on the following:

Direct Labor	$3,735.21
Overhead	1,917.79
Total Cost	6,653.00
Applications processed	19
Cost per application	350.16
Proposed fee, Item 48: per Application	350.00

Schedule Item 49. Application for special authorization under 14 CFR Part 216. Unless specifically authorized by its section 41302 permit, a foreign air carrier may not commingle traffic moving in foreign air transportation with traffic not moving in foreign air transportation unless it has a Special Authorization under Part 216. This situation arises when a foreign carrier serves between a U.S. point and a homeland point via an intermediate point. The intermediate-homeland leg of the flight is called a ''blind sector'' with respect to U.S. air transportation, because local traffic on that segment is not carried to or from the United States and is not in air transportation as defined in the Statute. Without the ability to commingle traffic on all flight segments, a carrier would lose valuable revenue. Thus the applicant for a Special Authorization to commingle blind-sector traffic seeks a special benefit, justifying a processing fee.

Our proposed fee for this item is based on the following:

Direct Labor	$477.27
Overhead	350.05
Total Cost	827.32
Applications processed	2
Cost per application	413.66
Proposed fee, Item 49: per application	410.00

Schedule Item 50. Application for emergency cabotage exemption under 49 U.S.C. 40109(g). Section 41701 of the Statute prohibits foreign civil aircraft from carrying revenue traffic between two U.S. points (''cabotage'' traffic) unless an exemption is granted under section 40109(g), which deals specifically with emergency cabotage. These applications are addressed separately from other exemptions, because on the one hand, the authority at issue in a given application usually is narrower, but on the other hand, the statutory criteria for a grant are more detailed and specialized, and the compressed timeframe for consideration requires more intense application of staff resources than do most exemptions in foreign air transportation. A processing fee is warranted since applicants for this authority are seeking the special benefit of performing otherwise prohibited air transportation.

Our proposed fee for this item is based on the following:

Direct Labor	$749.35
Overhead	583.50
Total Cost	1,332.85
Applications processed	4
Cost per application	333.21
Proposed fee, Item 50: per application	330.00

Schedule Item 51. Filing by a foreign air carrier of its proposed schedule for which approval is required under an international agreement. Section 40105(b) of the Statute provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements provide that the air carriers of each country file their proposed schedules for the approval of the other country's aviation authorities. Air carriers required to file schedules in this way may not perform air transportation without submitting their schedules for review. A processing fee for schedule filings is warranted since the air carrier is seeking the special benefit of the Department's approval of its proposed schedule for engaging in revenue-producing air transportation.

Our proposed fee for this item is calculated as follows:

Direct Labor	$1,253.03
Overhead	1,002.61
Total Cost	2,255.64
Filings processed	24
Cost per filing	93.99
Proposed fee, Item 51: per filing application	94.00

U.S. Air Carrier International Route Authority, Exemptions, Frequencies, and Charter Allocations: Schedule Items 52–58

The various items in this schedule category involve the authorization of international air service rights. Under the United States' pro-competitive international aviation policy (60 FR 21841), the Department routinely grants such rights to all qualified applicants, except in circumstances when the availability of rights is artificially constrained. In the absence of constraints, the Department requires only a simple application and acts to confer authority expeditiously. When limits apply, however, as in the case of restrictive bilateral agreements, and when applicants seek more authority than can be granted, we must conduct a comparative proceeding to select carriers (and in some cases gateways) for distribution of the limited rights available. Compared with a non-contested proceeding, a comparative proceeding typically entails substantially higher processing costs because each applicant submits a detailed service proposal with supporting data, which in turn are analyzed by the Department and by competing applicants. Thereafter, the Department issues a tentative decision; applicants respond to that decision and to one another's arguments; and following consideration and analysis of all pleadings, the Department issues its final decision.

In the interest of cost recovery, we are proposing that each applicant initially pay the processing fee in effect for the relevant non-contested air service rights (see items 52–56 below) and, if a comparative proceeding proves necessary, remit an additional fee to cover the additional cost (see item 57).

Schedule Item 52. Application for new, amended or renewed certificate authority, comparative proceeding not required. Section 41101 of the Statute provides that an air carrier may perform air transportation only if it holds a certificate of public convenience and necessity authorizing the transportation. A processing fee for applications under this item is warranted because in each instance of new certificate authority, amendment to an extant authority, or certificate renewal, the applicant is seeking the special benefit of the Department's authorization to commence, change or continue revenue-producing air transportation service.

The processing cost data collected under this schedule item do not indicate a need for distinct processing fees among applications for new, amended or renewed certificate authority. Therefore, we are proposing a single fee as follows:

Direct Labor	$6,306.10
Overhead	4,774.50
Total Cost	11,050.60
Applications processed	17
Cost per application	650.04
Proposed fee, Item 52: per application	650.00

Schedule Item 53. Application for new, renewal or amendment of exemption authority, comparative proceeding not required. Section 40109(c) of the Statute provides that an air carrier may obtain an exemption from section 41101 authorizing it to perform air transportation without a certificate of public convenience and necessity. A processing fee for this exemption authority is warranted since, in each instance of new exemption authority, amended authority, or exemption renewal, the applicant is seeking the special benefit of the Department's authorization to commence, change or continue revenue-producing air transportation without having a certificate of public convenience and necessity.

As with applications for certificate authority (item 52, *supra*), our processing cost data do not indicate a need for distinct fees among new, amended and renewed exemption authority, and we are proposing the following single fee:

Direct Labor	$23,626.46
Overhead	18,036.22
Total Cost	41,662.68
Applications processed	87
Cost per application	478.88
Proposed fee, Item 52: per application	480.00

Schedule Item 54. Application for initial allocation of scheduled-service frequencies in limited-entry market, comparative proceeding not required. Section 40105(b) of the Statute provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements limit the capacity of service, usually expressed in terms of number of weekly flights or ''frequencies'' of various-sized aircraft that U.S. air carriers may fly on the authorized routes. The Department must allocate the available frequencies among applicant U.S. carriers and establish the extent and duration of those allocations, taking public interest considerations into account. Because the applicant for scheduled-service frequencies is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation, a processing fee is warranted.

Our proposed fee for this schedule item is a follows:

Direct Labor	$2,178.93
Overhead	1,600.09
Total Cost	3,779.02
Applications processed	6
Cost per application	629.84
Proposed fee, Item 54: per application	630.00

Schedule Item 55. Application for renewal of allocation of scheduled-service frequencies in limited-entry market, comparative proceeding not required. Initial allocations of limited scheduled-service frequencies (item 54, *supra*) are made for finite terms, typically one or two years, because of the need to weigh the effects of any changes in market conditions. When the need for allocation persists, limited-term allocations are renewed. Since the applicant for frequency renewal seeks the special benefit of the Department's approval to continue revenue-producing air transportation, a processing fee is warranted. In contrast to the case of certificate or exemption authority (items 52 and 53, *supra*), the cost of processing an application for renewal of a frequency allocation is materially lower than that for the initial frequency award. Accordingly, the proposed fee for a renewal application is substantially lower:

Direct Labor	$1,047.80
Overhead	769.95
Total Cost	1,817.75
Applications processed	8
Cost per application	227.22
Proposed fee, Item 55: per application	230.00

Schedule Item 56. Application for allocation of limited charter flights, comparative proceeding not required. Section 40105(b) provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements limit, usually on a seasonal or annual basis, the number of charter flights that may be operated. The Department must allocate the available charters among applicant U.S. carriers before each charter allocation period, balancing the applicants' expectations against their historical performance and the need to reserve a portion of the periodic allocation for emergencies or other unforeseen demand. During the charter period, carriers must relinquish unused allocations, and others may apply for additional flights. Since the applicant seeks the special benefit of the Department's authorization to conduct revenue-producing charter air transportation, a processing fee is justified.

Our proposed fee for this schedule item is a follows:

Direct Labor	$596.41
Overhead	458.14
Total Cost	1,054.55
Applications processed	6
Cost per application	175.76
Proposed fee, Item 56: per application	180.00

Schedule Item 57. Additional charge for an application for limited authorities (Items 52–56 inclusive) when a comparative proceeding *is* required. Schedule items 52–56 above apply to various forms of U.S. carrier authority to serve foreign markets. As we describe earlier, when applications exceed available rights, it falls to the Department to conduct a comparative proceeding to determine the distribution of those rights among applicants, resulting in significant additional processing costs. It often is not known at the time of initial application whether selection procedures will be required, because even when rights are limited, the applications in aggregate may not exceed the available rights. Therefore, we are proposing that each applicant initially pay the fee applicable per items 52–56 above, and then remit an additional fee with its first filing subsequent to the Department's notice that a comparative proceeding is necessary.

Our proposed additional fee in the event of a comparative proceeding is established as follows:

	Applications	Total cost	Cost per application
Carrier/gateway selection required	24	$95,266.01	$3,969.42
Selection not required (items 52–56)	124	59,364.60	478.75
Incremental cost			$3,490.67
Proposed fee, Item 57: $3,490 per application			

Schedule Item 58. Application to transfer foreign route/frequency authority. Foreign route authority granted to a U.S. air carrier under 49 U.S.C. 41102 or 40109, along with any frequency allocation required for its exercise, may not be transferred to another air carrier without the Department's approval. A fee for processing an application for transfer is warranted since the applicant is seeking the special benefit of the Department's approval of an action needed by (1) the transferee to engage in the revenue-producing air transportation under the authority and (2) the transferor so that it may receive any compensation provided for in the transfer agreement.

Our proposed fee for this item is calculated as follows:

Direct Labor	$2,993.01
Overhead	2,061.49
Total Cost	4,994.50
Applications processed	1
Cost per application	4,994.50
Proposed fee, Item 58: per application	4,990.00

Code-Share, Wet-Lease, Transborder and Intermodal Authorizations: Schedule Items 59–62

Schedule Item 59. Application for code-share Statement of Authorization.

Schedule Item 60. Application for wet-lease Statement of Authorization.

U.S. air carrier certificates issued under 49 U.S.C. 41102 and foreign air carrier permits issued under 49 U.S.C. 41302 require that code-share/wet-lease flights must be conducted in accordance with Part 212 of our rules. Part 212 provides that certain such arrangements require specific prior approval in the form of a Statement of Authorization, which the Department grants if it finds that approval will be in the public interest. A processing fee is warranted because the applicant is seeking the special benefit of the Department's authorization to conduct an additional type of revenue-producing operations in foreign air transportation.

While code shares and wet leases require the same form of authorization and involve a similar special benefit, their application processing costs differ materially. We therefore are proposing different fees for schedule items 59 and 60, as follows:

Code Share	
Direct Labor	$15,820.70
Overhead	11,594.31
Total Cost	27,415.01
Applications processed	25
Cost per resolution	1,096.60
Proposed fee, Item 59: per application	1,100.00
Wet Lease	
Direct Labor	2,679.05
Overhead	2,084.40
Total Cost	4,763.45
Applications processed	16
Cost per application	297.72
Proposed fee, Item 60: per application	300.00

Schedule Item 61. [Reserved.]

Schedule Item 62. Application for Statement of Authorization to conduct intermodal services provided for in bilateral agreement. Part 222 of the Department's regulations provides that a foreign air carrier, whose homeland government has executed an agreement with the United States exchanging air freight intermodal rights, may obtain authorization to perform such services in the United States by applying to the Office of International Aviation. (Part 222 also provides that a foreign air carrier seeking such authority *not* covered by a bilateral agreement must apply for an exemption under 49 U.S.C. 40109, in which instance the application is processed under schedule item 53, exemption authority, above.) The Department grants an intermodal statement of authorization if it will be in the public interest. An application processing fee is warranted because the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing operations in foreign air transportation.

Our proposed fee for this item is calculated as follows:

Direct Labor	$488.35
Overhead	390.82
Total Cost	879.17
Applications processed	3
Cost per application	293.06
Proposed fee, Item 62: per application	290.00

Regulation of Tariffs and Rates: Schedule Items 63–69

Schedule Item 63. Approval of inter-carrier agreement(s), agreement type To and/or from the U.S.

Schedule Item 64. Approval of inter-carrier agreement(s), agreement type Foreign-to-foreign.

Schedule Item 65. Approval of inter-carrier agreement(s), Technical correction. Section 41309 of the Statute provides for the filing of inter-carrier agreements with the Department for approval and consequent grant of antitrust immunity. The Department's implementing regulations (14 CFR Part 303) require carriers seeking approval of an inter-carrier agreement to submit and have approved by the Department an application in the manner prescribed by the regulation. A processing fee for such applications is justified since the applicant is seeking the special benefit of the Department's approval of immunity from the antitrust laws of the United States.

Our proposed fees for schedule items 63, 64 and 65, shown below, reflect differences in their respective processing costs. The fee for item 63 and 64 is per resolution while that for item 65 is per application.

To/from U.S.	
Direct Labor	$10,502.46
Overhead	7,722.49
Total Cost	18,224.95
Resolutions processed	216
Cost per resolution	84.37
Proposed fee, Item 63: per resolution	84.00
Foreign-to-foreign	
Direct Labor	1,080.05
Overhead	864.35
Total Cost	1,944.40
Resolutions processed	417
Cost per resolution	4.66
Proposed fee, Item 64: per resolution	5.00
Technical correction	
Direct Labor	195.36
Overhead	156.34
Total Cost	$351.70
Applications processed	23
Cost per application	15.29
Proposed fee, Item 65: per application	15.00

Schedule Item 66. Application for an exemption under 49 U.S.C. 40109 to carry traffic not otherwise authorized under tariffs in effect. Under section 41504 of the Statute and section 221.3 of the Department's regulations, air carriers and foreign air carriers are required to file tariffs for scheduled foreign air transportation of persons, and may carry such traffic only for the prices stated in those tariffs. When a carrier wishes to carry revenue traffic for which it does not have an effective tariff on file, or wishes to carry such traffic at a price other than that in its applicable tariff, it must obtain an exemption from the Department under section 40109 of the Statute. A processing fee is warranted since the applicant for this exemption seeks the special benefit of the Department's authorization to conduct revenue-producing foreign air transportation not otherwise authorized by a tariff in effect.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a modification of the current fee or to assume that fee costs have changed. Accordingly, the current fee of $53 per Application is retained.

Schedule Item 67. Application for permission to file tariffs on less than statutory notice. Section 41504 of the Statute and section 221.160 of the regulations provide that required tariffs are to be filed a certain number of days before those tariffs can take effect. Under Subpart P of the regulations, however, carriers may request permission to have their tariffs take effect in less than the statutorily required notice period. A processing fee is warranted since the applicant for this Special Tariff Permission seeks the special benefit of the Department's authorization to implement tariffs on shorter notice than statutorily required.

The basis of our proposed fee for this item is as follows:

Direct Labor	$2,124.07
Overhead	1,700.04
Total Cost	3,824.11
Applications processed	95
Cost per application	40.25
Proposed fee, Item 67: per application	40.00

Schedule Item 68. Application for approval of waiver/modification of tariff regulations. Section 221.200 of the regulations provides that air carriers and foreign air carriers may apply to the Department for a waiver or modification of the requirements contained in part 221 (Tariffs). An application processing fee for such waiver or modification is warranted since the applicant seeks the special benefit of the Department's approval for relief from provisions of the requirements regulating tariffs.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $12 per Application is retained.

Schedule Item 69. Application for provision of certified copies of tariff material upon request (with DOT seal). Section 389.15 of the regulations provides that certified copies of tariffs filed with the Department will be provided upon request. Certification of these data are required in civil cases in order for parties to formally submit air carrier tariff provisions involving charges and conditions of carriage in international air transportation officially filed with the Department. A fee for providing this service is warranted because of the special benefit to the applicant of having certified copies of officially filed tariff material for use in legal proceedings.

The basis of our proposed fee is as follows:

Direct Labor	$807.58
Overhead	646.30
Total Cost	1,453.88
Applications processed	6
Cost per application	242.31
Proposed fee, Item 69: per application	240.00

Other Exemptions and Authorizations: Schedule Items 70–76

Schedule Item 70. Application for an exemption for slots at a slot-controlled airport. Under section 41714 of the Statute, an air carrier may apply to the Department for an exemption from 14 CFR Part 93, Subparts K and S (the High Density Rule), in order for the carrier to increase its number of operations (takeoff or landing ''slots'') at JFK, La Guardia, and/or O'Hare airports (Reagan National also is slot controlled, but is excluded from the exemption). Recognizing that air carriers may be restrained from entering markets as consequence of slot restrictions, the Congress provided the exemption mechanism as a way to increase air carrier access at three of the four slot-controlled airports. A processing fee for a slot exemption application is justified since the applicant is seeking the special benefit of the Department's authorization enabling access to takeoff and landing rights that otherwise would not be available.

Our proposed fee for this item is based on the following:

Direct Labor	$11,155.93
Overhead	6,211.62
Total Cost	17,367.55
Applications processed	4
Cost per application	4,341.89
Proposed fee, Item 70: per application	4,340.00

Schedule Item 71. Motion for confidential treatment of documents. Section 302.39 of the Department's Procedural Regulations sets forth the procedures that an applicant or other party must follow in seeking the Department's concurrence to withhold certain information from public disclosure in the context of a Departmental proceeding. A processing fee for this item is justified since the applicant is seeking the special benefit of the Department's approval to withhold sensitive information.

Our proposed fee for this item is determined as follows:

Direct Labor	$499.57
Overhead	253.37
Total Cost	752.94
Applications processed	2
Cost per application	376.47
Proposed fee, Item 71: per application	380.00

Schedule Item 72. Application for approval of and antitrust immunity for inter-carrier agreements. Under sections 41308 and 41309 of the Statute, air carriers and foreign air carriers may seek approval of antitrust immunity for agreements and activities with common business objectives. Applicants seek the benefit of this immunity in order to protect themselves from lawsuits alleging behavior normally not permitted under the antitrust laws. A processing fee is warranted since the applicant is seeking the special benefit of the Department's approval of immunity from antitrust enforcement.

No applications under this schedule item were concluded during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $1,080 per Application is retained.

Schedule Item 73. [Reserved.]

Schedule Item 74. [Reserved.]

Schedule Item 75. Petition for a change in mail rates. Section 41901 of the Statute provides that the United States Postal Service or a certificated air carrier may file a petition with the Department to change the mail rates set by the Department to be paid by the Postal Service to U.S. air carriers for the carriage of U.S. mail between the United States and foreign countries and/or within the State of Alaska. A fee for processing a petition is warranted since the petitioner is seeking the special benefit of the Department's approval to change existing mail rates.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $420 per Application is retained.

Schedule Item 76. Application for overseas military personnel charter operator authority. Under Part 372 of the Department's regulations, any U.S. citizen desiring to operate as an overseas military personnel charter operator may apply to the Department for operating authority. If granted this authority, the operator is relieved from provisions of section 41102 of the Statute for the purpose of enabling the operator to provide overseas military personnel charters utilizing aircraft chartered from direct air carriers or foreign air carriers. A processing fee is warranted since the applicant is seeking the special benefit of the Department's permission to advertise, organize, provide, sell and/or offer to sell overseas military personnel charters.

No applications under this schedule item were processed during the cost-collection period, nor has the Department had occasion to process any such applications for several years. Absent evidence of a cost change, the current fee of $665 per Application is retained.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0826]

Food Labeling: Use on Dietary Supplements of Health Claims Based on Authoritative Statements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to permit the use on dietary supplements

of health claims based on authoritative statements under the notification procedures in the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA permits nutrient content claims based on authoritative statements for both conventional foods and dietary supplements. FDAMA also permits health claims based on authoritative statements for conventional foods; however, FDAMA does not provide for the use of health claims based on authoritative statements for dietary supplements. FDA believes that, for health claims, conventional foods and dietary supplements should be subject to the same standards and procedures, including the notification procedure provided by FDAMA.

DATES: Submit written comments on the proposed rule by April 6, 1999. Submit written comments on the information collection provisions by February 22, 1999.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:
Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(3) and (r)(2) of the act (21 U.S.C. 343(r)(3) and (r)(2)). Specifically, FDAMA added new section 403(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), which provides for the use in food labeling of nutrient content claims and health claims based on authoritative statements. FDAMA requires that a notification of a prospective nutrient content claim or a prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce.

The notification must include specific information including: (1) The exact wording of the prospective nutrient content claim or health claim; (2) a concise description of the basis upon which the petitioner relied for determining that the requirements of section 403(r)(2)(G)(i) of the act for nutrient content claims or section 403(r)(3)(C)(i) of the act for health claims have been satisfied; (3) a copy of the authoritative statement upon which the person relied in making the claim; and (4) a balanced representation of the scientific literature relating to the nutrient level for a prospective nutrient content claim or relating to the relationship between the nutrient and the disease or health-related condition for a prospective health claim. For a prospective nutrient content claim, the authoritative statement must identify the nutrient level to which the claim refers. For a prospective health claim, the authoritative statement must be a statement about the relationship between a nutrient and a disease or health-related condition to which the claim refers. For both types of claims, the authoritative statement must be currently in effect and it must have been published either by a scientific body of the U.S. Government that has official responsibility for public health protection or research directly relating to human nutrition (e.g., the National Institutes of Health or the Centers for Disease Control and Prevention) or by the National Academy of Sciences or any of its subdivisions (hereinafter referred to as a ''scientific body'').

Under new section 403(r)(2)(H) and (r)(3)(D) of the act, such a claim may be made until: (1) FDA has issued an effective regulation that prohibits or modifies the claim; (2) FDA has issued a regulation finding that the requirements under section 403(r)(2)(G) of the act for a prospective nutrient content claim or under section 403(r)(3)(C) of the act for a prospective health claim have not been met; or (3) a District Court of the United States in an enforcement proceeding under chapter III of the act has determined that the requirements under section 403(r)(2)(G) of the act for a prospective nutrient content claim or under section 403(r)(3)(C) of the act for a prospective health claim have not been met. During the 120 days following submission of a notification and before the claim may appear on a food, the agency may notify any person who is making the claim that the notification did not include all of the required information.

Section 304 of FDAMA permits nutrient content claims based on authoritative statements for both conventional foods and dietary supplements because section 304 amended section 403(r)(2) of the act, which provides for nutrient content claims on both conventional foods and dietary supplements. Section 303 of FDAMA, however, does not provide for health claims for dietary supplements based on authoritative statements. In particular, section 403(r)(5)(D) of the act specifies that health claims for dietary supplements shall not be subject to section 403(r)(3) of the act, but rather to a procedure and standard that FDA establishes by regulation. In section 303 of FDAMA, Congress amended section 403(r)(3) of the act, which provides for procedures and standards for health claims for conventional foods, to allow for health claims based on authoritative statements for conventional foods, but Congress did not amend section 403(r)(5)(D) of the act. Therefore, FDA believes that section 403(r)(3)(C) of the act provides only for use of a health claim based on an authoritative statement on any conventional food that provides an appropriate level of the nutrient that is the subject of the health claim, but that does not exceed the disqualifying nutrient levels identified in § 101.14(a)(5) (21 CFR 101.14(a)(5)), provided that the food and the claim otherwise comply with section 403(r)(3)(C) of the act and all other provisions of the act.

II. The Proposal

FDA believes that, for health claims, conventional foods and dietary supplements should be subject to the same standards and procedures, including the notification procedure provided by FDAMA. This approach is consistent with the agency's final rule that makes dietary supplements subject to the same general requirements that apply to conventional foods with respect to health claims (59 FR 395, January 4, 1994). This approach is also consistent with the guidance of the Commission on Dietary Supplement Labels. Although the commission did not discuss the provisions of FDAMA as enacted, it did state in its 1997 report (Ref. 1) that the process for the approval of health claims should remain the same for dietary supplements and conventional foods.

Therefore, FDA is proposing to add a new section to subpart E of part 101 (21 CFR part 101) to provide for the use of health claims based on authoritative statements on dietary supplements. The agency intends this rule to provide for the same process and standard for the use on dietary supplements of health claims based on authoritative statements as provided by section 403(r)(3)(C) of the act for conventional foods.

This proposed regulation tracks the language of FDAMA section 303 and it would place dietary supplements on equal footing with conventional foods with respect to health claims. The agency notes that it has issued a document entitled ''Guidance for Industry—Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body'' ((Internet) ''http://www.cfsan.fda.gov/~dms/guidance.html'') (Ref. 2), as well as nine interim final rules in response to notifications of health claims based on authoritative statements (63 FR 34084, 34092, 34097, 34101, 34104, 34107, 34110, 34112, and 34115, June 22, 1998). FDA has received comments on the nine interim final rules, several of which take issue with the process and principles outlined in sections I.A and I.B of the ''Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts'' interim final rule (63 FR 34084 at 34085 through 34087). FDA will respond to those comments in proposing implementing regulations for sections 303 and 304 of FDAMA, and when it completes those nine rulemakings. At this time, however, FDA advises that the process and principles in the guidance and the nine interim final rules reflect the agency's current thinking with respect to implementation of sections 303 and 304 of FDAMA. The agency also advises that, in proposing regulations to implement sections 303 and 304 of FDAMA, it will provide further detail on how the notification procedures will be implemented with respect to the use of health claims based on authoritative statements on all foods. The agency expects that those implementing regulations would maintain the equal treatment intended by this proposal. Therefore, the agency expects to withdraw this regulation, if finalized, when that implementing regulation is issued because this regulation would then no longer be necessary.

III. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. 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). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as ''a Federal mandate that may result in the 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.'' FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that this proposed rule is not a major rule for the purpose of congressional review.

In this rule, FDA is proposing to permit the use on dietary supplements of health claims based on authoritative statements under the notification procedures in FDAMA. The proposed rule potentially affects the entire dietary supplement industry.

There are several types of products that may be considered to be dietary supplements. These products include, but are not limited to, vitamin and mineral supplements, herbal products, and products that contain other similar nutritional substances. Estimates of the number of dietary supplements are approximate because no one source collects information on all types of dietary supplements. Some sources include only dietary supplements of vitamins and minerals, others include herbals or botanicals, and still others include types of products that may or may not be dietary supplements, such as sports nutrition products and ''functional foods,'' a term for which there is no definition. FDA tentatively estimates the number of dietary supplement products to be 29,000. FDA estimates the number of stockkeeping units, a count of the number of labels, to be approximately 75,000.

In its analysis of the proposed rule to establish regulations on statements made for dietary supplements concerning the effect of the product on the structure or function of the body (63 FR 23624 at 23628 and 23629, April 29, 1998), FDA estimated that approximately 850 firms manufacture dietary supplements. For purposes of determining the benefits and costs of this regulation, FDA will use 850 as an estimate of the number of dietary supplement firms.

Because the notification procedure established by FDAMA is voluntary, the only dietary supplement firms likely to take advantage of this procedure will be those firms who anticipate that private benefits will exceed private costs. Consequently, FDA will not attempt to estimate the internal benefits and costs for individual dietary supplement firms. Those firms who anticipate that the benefits will exceed the costs will make health claims based on authoritative statements. The number of health claim notifications submitted can, therefore, measure the effects of the proposed rule. Since the notification procedures for statements on dietary supplements were established in October 1997, FDA has received more than 3,000 notifications of nutritional support statements (structure-function claims). FDA believes that dietary supplement firms will continue to rely mainly on structure-function rather than health claims. FDA expects the number of health claim notifications to be a small fraction of the number of nutritional support statement notifications. Based on FDA's experience with health claims and with other similar notification procedures that fall under its jurisdiction, FDA has estimated that 12 firms per year may submit an average of 5 health claim notifications each, for a total of 60 notifications. The agency specifically invites comments on this estimate.

In addition to the benefits and costs internal to dietary supplement firms, FDA expects this proposed rule to generate benefits and costs to society. Most of the benefits from this proposed rule will come from the increased availability of the information provided by health claims. FDA cannot quantify those benefits. To the extent that the lack of these claims has caused consumers to seek out the information from other sources, this rule will benefit consumers by reducing the cost of searching for information and by ensuring that the information provided to consumers is appropriate. The proposed rule will also impose additional costs on FDA and on the scientific bodies of the U.S. Government whose authoritative statements form the basis for the claims. FDA is unable to quantify those costs at this time, however.

B. Small Entity Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this proposed rule would have a significant economic impact on a substantial number of small businesses.

According to the Regulatory Flexibility Act, the definition of a small entity is a business independently owned and operated and not dominant in its field. The Small Business Administration (SBA) has set size standards for most business categories through use of four-digit Standard Industrial Classification (SIC) codes. Dietary supplements fall into several codes, including Food Preparations Not Elsewhere Classified (SIC 2099), Industrial Inorganic Chemicals Not Elsewhere Classified (SIC 2819), Medicinal Chemicals and Botanical Products (SIC 2833), Pharmaceutical Preparations (SIC 2834), and Industrial Organic Chemicals Not Elsewhere Classified (SIC 2869). According to SBA size standards, dietary supplement firms are small entities if they have fewer than 500 employees in SIC codes 2099 and 2899, fewer than 750 employees in SIC codes 2833 and 2834, and fewer than 1,000 employees in SIC codes 2819 and 2969. Based on these standards, FDA has previously estimated that approximately 95 percent of dietary supplement manufacturers could be considered small under SBA size standards (63 FR 23624 at 23631).

As discussed earlier, FDA estimates that about 12 firms per year will submit health claims notifications based on authoritative statements. Because most businesses in the dietary supplement industry would be classified as small under SBA standards, FDA assumes that many businesses potentially affected by this proposed rule will be small. FDA, therefore, concludes that the proposed rule will affect a substantial number of small entities. The proposed rule would, however, impose no involuntary costs and would benefit small businesses wishing to make health claims based on authoritative statements.

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives that would minimize the impact on small entities. FDA believes that the proposed rule will impose no involuntary burdens on small entities. Other regulatory options were nevertheless considered, including taking no new regulatory action and waiting until the implementing regulation for section 303 of FDAMA to propose that health claims based on authoritative statements be permitted for dietary supplements. FDA rejected the option of taking no new regulatory action because it would make conventional foods and dietary supplements subject to different standards for health claims. As stated previously in this document, the agency expects to withdraw this rule, if finalized, when the implementing regulation for section 303 of FDAMA is issued.

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. Effective Date

FDA is proposing that any final rule that may be issued based upon this proposal become effective upon publication in the **Federal Register**. Under section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) and FDA's procedural regulations at 21 CFR 10.40(c)(4)(i), the agency may make a final substantive rule effective immediately upon publication if the rule ''grants or recognizes an exemption or relieves a restriction.'' If it becomes final, this rule would not place an affirmative requirement on anyone but rather would relieve a restriction on the dietary supplement industry. As more fully discussed previously, FDAMA makes the streamlined notification procedures for health claims available only to the conventional food industry. The agency is proposing to relieve this restriction in FDAMA to make health claims based on authoritative statements also available for use by the dietary supplement industry.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Notification Procedures for Dietary Supplement Health Claims Based on Authoritative Statements.

Description: This proposed rule would permit producers of dietary supplements to market a product whose label or labeling bears a health claim based on authoritative statements of certain scientific bodies of the Federal Government or the National Academy of Sciences, or any of its subdivisions, using the same process and standard established for conventional foods by the provisions of section 403(r)(3)(C) of the act. Under this proposed rule, a dietary supplement producer may use such a health claim in the labeling of an appropriate product 120 days after a complete notification of the claim is submitted to FDA, unless: (1) The agency has issued an effective regulation that prohibits or modifies the claim, (2) the agency has issued a regulation finding that the requirements of proposed § 101.90(a) have not been met, or (3) a Federal District Court in an enforcement proceeding under chapter III of the act (21 U.S.C. 301–310) has determined that the requirements of proposed § 101.90(a) have not been met. This proposed rule would prescribe the type of information that a dietary supplement producer must include in a notification that it would submit to the agency.

As noted previously, FDA recently announced the availability of a guidance on the submission of a notification of a nutrient content claim or health claim based on an authoritative statement of a scientific body under the provisions of section 403(r)(2)(G) or (r)(3)(C) of the act. In estimating the annual reporting burden under this proposed rule, FDA has assumed that submitters of notifications will follow that guidance.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Annual Hours
101.90	12	5	60	40	2,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with health claims and with other similar notification procedures that fall under its jurisdiction. Because the claims are based on authoritative statements of certain scientific bodies of the Federal Government or the National Academy of Sciences, or any of its subdivisions, FDA believes that the information submitted with a notification will be either provided as part of the authoritative statement or readily available to anyone wishing to submit a notification.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send written comments regarding information collection by February 22, 1999, to the Office of Information and Regulatory Affairs, OMB (address above), Attn: Desk Officer for FDA.

VII. Comments

Interested persons may, on or before April 6, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Commission on Dietary Supplement Labels, ''Report of the Commission on Dietary Supplement Labels,'' p. vii, November 1997.

2. ''Guidance for Industry—Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body,'' FDA, DHHS, June 11, 1998.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

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 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.90 is added to subpart F to read as follows:

§ 101.90 Notifications for health claims based on authoritative statements.

(a) A claim of the type described in § 101.14(a)(1) which is not authorized by the Food and Drug Administration (FDA) in a regulation found in this part shall be authorized and may be made with respect to a dietary supplement if:

(1) A scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition (such as the National Institutes of Health or the Centers for Disease Control and Prevention) or the National Academy of Sciences or any of its subdivisions has published an authoritative statement, which is currently in effect, about the relationship between a nutrient and a disease or health-related condition to which the claim refers;

(2) A person has submitted to FDA, at least 120 days (during which FDA may notify any person who is making a claim as authorized by paragraph (a) of this section that such person has not submitted all the information required by this paragraph) before the first introduction into interstate commerce of the dietary supplement with a label containing the claim:

(i) A notice of the claim, which shall include the exact words used in the claim and shall include a concise description of the basis upon which such person relied for determining that the requirements of paragraph (a)(1) of this section have been satisfied;

(ii) A copy of the statement referred to in paragraph (a)(1) of this section upon which such person relied in making the claim; and

(iii) A balanced representation of the scientific literature relating to the relationship between a nutrient and a disease or health-related condition to which the claim refers;

(3) The claim and the dietary supplement for which the claim is made are in compliance with § 101.14(a)(5) and (e)(3) and are otherwise in compliance with sections 403(a) and 201(n) of the act (21 U.S.C. 343(a) and 21 U.S.C. 321(n)); and

(4) The claim is stated in a manner so that the claim is an accurate representation of the authoritative statement referred to in paragraph (a)(1) of this section and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet. For purposes of this paragraph, a statement shall be regarded as an authoritative statement of a scientific body described in paragraph (a)(1) of this section only if the statement is published by the scientific body and shall not include a statement of an employee of the scientific body made in the individual capacity of the employee.

(b) A claim submitted under the requirements of paragraph (a) of this section may be made until:

(1) Such time as FDA issues a regulation under the standard in § 101.14(c):

(i) Prohibiting or modifying the claim and the regulation has become effective; or

(ii) Finding that the requirements of paragraph (a) of this section have not been met, including finding that the petitioner has not submitted all the information required by such clause; or

(2) A District Court of the United States in an enforcement proceeding under chapter III of the act (21 U.S.C. 301–310) has determined that the requirements of paragraph (a) of this section have not been met.

Dated: October 7, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 99–1365 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 98N–0970]

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its menstrual tampon labeling regulation to provide an absorbency term for tampons that absorb 15 to 18 grams (g) of fluid. The purpose of this proposed rule is to enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles. FDA is issuing this proposed rule under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments on the proposed rule should be submitted by April 21, 1999. See section II of this document for the proposed effective date of a final rule based on this document. Written comments on the information collection requirements should be submitted by February 22, 1999.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments regarding the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA published a final rule which, among other things, amended its menstrual tampon labeling regulation to standardize the existing absorbency terms (junior, regular, super, and super plus) corresponding to the following four absorbency ranges: Less than 6, 6 to 9, 9 to 12, and 12 to 15 g of fluid. The final rule did not include corresponding terms of absorbency for 15 to 18 g nor the range above 18 g of fluid. Tampon manufacturers have asserted that many women with heavy menstrual flow need higher absorbency tampons to manage their heavy menstrual flow (see 54 FR 43766 at 43769).

FDA has consulted with the Center for Disease Control on this proposed rule. Tampons with absorbency up to 18 g have been marketed in other countries with very low Toxic Shock Syndrome (TSS) rates. FDA believes that the proposed rule will not materially increase the risk of TSS for women using tampons in accordance with the labeling.

Tampons are currently classified into class II (special controls) (see 21 CFR 884.5460 and 884.5470). Any person who is required to register under section 510 of the act (21 U.S.C. 360) and part 807 (21 CFR part 807) and who intends to begin the introduction or delivery for introduction into interstate commerce of a tampon for commercial distribution is required to submit a premarket notification to FDA at least 90 days before making such introduction or delivery in accordance with section 510(k) of the act and subpart E of part 807. Under § 807.87(e), a premarket notification for a device is to contain, among other things, labeling for the device. Because there is no uniform labeling term for tampons that absorb 15 to 18 g of fluid, the agency is now proposing that tampons that absorb 15 to 18 g of fluid be labeled as“ ultra absorbency”. The agency is specifically seeking comment on the term ‘‘ultra’’ for this absorbency range, and it invites suggestions of any alternative terms. At this time, FDA is not proposing a term describing tampons with absorbency above 18 g of fluid, and does not anticipate that tampons in the above 18 g absorbency range will be considered for premarket clearance based on this proposed rule.

II. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after the date of publication of the final rule in the **Federal Register**.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (k) 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.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), 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 agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, 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.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because manufacturers already are required to identify the absorbency ranges of their tampons, establishing a standardized term for tampons that absorb 15 to 18 g of fluid will impose no significant economic impact on any small entities. The agency therefore certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

V. Request for Comments

Interested persons may, on or before April 21, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing each collection of information.

At this time, FDA is seeking clearance only for the information collections that would be imposed by this proposed rule. FDA intends to seek clearance for other information collections in § 801.430 (21 CFR 801.430) in the immediate future.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency of 15 to 18 grams.

Description: These information collection requirements in this proposed rule apply to tampon manufacturers. This proposed rule would establish a standardized term of absorbency, ''ultra,'' for 15 to 18 g of fluid. Standardized terms already have been established for lower ranges of absorbency. Manufacturers of ''ultra'' absorbency tampons would be required to label the product in accordance with § 801.430. The labeling would have to be supported by design and performance specifications, as well as certain test results, including dimensions, pledget weight, absorbency by Syngyna method, adequate string attachment, and microbiological testing. The purpose of the proposed rule is to enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles and choose the least absorbent tampon needed to control menstrual flow and, thus, reduce their risk of TSS.

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Annual Hours	Total Operating Costs
801.430(e)(1)	2	1	2	40	80	3,200

[1] There are no capital or maintenance costs associated with this collection of information.

These estimates are based on agency communications with industry and FDA's knowledge and experience with tampon labeling. FDA expects that only two manufacturers would revise the labels of their products to incorporate the ''ultra'' absorbency range of 15 to 18 g. FDA estimates that the operating costs for changes in labeling would require a one-time cost of $1,600 per manufacturer.

FDA tentatively concludes that the labeling requirements found in § 801.430(c) and (d) are not subject to review by OMB because they do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501 *et seq*.). Rather, the warning statements are ''public disclosure[s] of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

In compliance with the PRA (44 U.S.C 3507(d)), the agency has submitted the collection of information provisions of the proposed rule to OMB for review. Interested persons wishing to submit comments regarding the information collection requirements should do so by February 22, 1999, and should direct them to the Office of Information and Regulatory Affairs, OMB, address above.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

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 801 be amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

2. Section 801.430 is amended in paragraph (e)(1) by revising the table to read as follows:

§ 801.430 User labeling for menstrual tampons.

* * * * *

(e) * * *

(1) * * *

Ranges of absorbency in grams[1]	Corresponding term of absorbency
6 and under	Junior absorbency.
6 to 9	Regular absorbency.
9 to 12	Super absorbency.

Ranges of absorbency in grams[1]	Corresponding term of absorbency
12 to 15	Super plus absorbency.
15 to 18	Ultra absorbency.
Above 18	No term.

[1]These ranges are defined, respectively, as follows: Less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to an including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

* * * * *

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1362 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116826–97]

RIN 1545–AW01

Deduction for Interest on Qualified Education Loans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and requests to videoconference the public hearing.

SUMMARY: This document contains proposed regulations relating to the deduction for interest paid on qualified education loans. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. The proposed regulations affect taxpayers who pay interest on qualified education loans. This document also provides notice that a public hearing will be held on the proposed regulations and that persons outside the Washington, DC, area who wish to testify at the hearing may request that the IRS videoconference the hearing to their sites.

DATES: Written or electronically generated comments must be received by April 21, 1999. Requests to videoconference the hearing to other sites must be received by March 22, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–116826–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116826–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments. html. The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in an announcement in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, contact John P. Moriarty, (202) 622–4950 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Michael L. Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1). Section 202 of the Taxpayer Relief Act of 1997 (Pub. L. 105–34 (111 Stat. 778) (TRA 97)) added section 221 of the Internal Revenue Code to allow a deduction from gross income for certain interest paid on qualified education loans. On November 17, 1997, the IRS published Notice 97–60 (1997–46 I.R.B. 8) to provide guidance on the higher education tax incentives enacted by TRA 97, including the deduction for interest paid on qualified education loans. Section 6004(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206 (112 Stat. 685)) (RRA 98) and section 4003(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277 (112 Stat. 2681)) (Omnibus Act 99) made technical amendments to section 221. TRA 97 also added section 6050S to the Internal Revenue Code, which requires the filing of information returns by certain persons who receive payments of interest that may be deductible as interest on a qualified education loan. In 1998, the IRS published two notices describing the information returns that are required under section 6050S for 1998 and 1999. On January 20, 1998, the IRS published Notice 98–7 (1998–3 I.R.B. 54), which describes the information reporting required under section 6050S for 1998. On November 16, 1998, the IRS published Notice 98–54 (1998–46 I.R.B. 25), which modified Notice 98–7 to reflect a technical amendment made by RRA 98 and extended the application of Notice 98–7, as so modified, to information reporting required under section 6050S for 1999.

Explanation of Provisions

Section 221 allows taxpayers who are legally obligated to pay interest on qualified education loans a federal income tax deduction for their interest payments. The deduction is an adjustment to gross income and, therefore, is available to eligible taxpayers regardless of whether they itemize deductions.

The deduction is limited to $2,500 for taxable years beginning after 2000. For taxable years 1998, 1999 and 2000, the limits are $1,000, $1,500 and $2,000, respectively. Consistent with the income limitations in section 221(b)(2), the proposed regulations provide that the deduction is phased-out for taxpayers with modified adjusted gross income between $40,000 and $55,000 ($60,000 and $75,000 for taxpayers filing a joint return) for the taxable year. For taxable years beginning after 2002, these amounts will be adjusted for inflation.

No deduction under section 221 is allowed in a taxable year to an individual who is properly claimed as a dependent on another taxpayer's federal income tax return for the taxable year. In addition, a taxpayer who is married as of the end of a taxable year is allowed a deduction under section 221 only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

Consistent with section 221(e)(1), the proposed regulations define a *qualified* *education loan* to mean any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses on behalf of a student enrolled at least half-time in a program leading to a degree, certificate, or other recognized educational credential. The student must be the taxpayer, the taxpayer's spouse, or the taxpayer's dependent at the time the indebtedness is incurred. In addition, the qualified higher education expenses must be incurred within a reasonable period of time before or after the indebtedness is incurred. The requirement that the indebtedness be incurred solely to pay qualified higher education expenses was added by RRA '98. Accordingly, *mixed use* loans are not qualified education loans. Similarly, revolving lines of credit (e.g., credit card debt) generally are not qualified education loans, unless the borrower uses the line of credit solely to pay qualified higher education expenses.

Consistent with section 221(e)(1), the proposed regulations provide that a loan made by an individual who is related to the borrower, within the meaning of section 267(b) or 707(b)(1), is not a qualified education loan. For example, a loan from a parent or grandparent of the borrower is not a qualified education loan. In addition, consistent with a technical amendment to section 221(e) contained in the Omnibus Act '99, the proposed regulations provide that loans made under any qualified employer plan (within the meaning of section 72(p)(4)) or made pursuant to any contract referred to in section 72(p)(5) are not qualified education loans. The proposed regulations also provide that loans that are not issued or guaranteed as part of a federal postsecondary education loan program nonetheless may be qualified education loans.

The proposed regulations provide that whether or not qualified higher education expenses are paid within a reasonable period of time before or after the indebtedness is incurred depends on all the facts and circumstances. However, the proposed regulations provide two safe harbors. The first safe harbor treats any education loan that is issued as part of a federal postsecondary education loan program as meeting the reasonable period requirement. The second safe harbor treats qualified higher education expenses as paid or incurred within a reasonable period of time before or after the indebtedness is incurred if the expenses relate to a particular academic period and the proceeds of the loan are disbursed within a period that begins 60 days prior to the start of that academic period and ends 60 days after the end of that academic period. The proposed regulations do not require actual tracing of loan proceeds to the payment of qualified higher education expenses.

The proposed regulations define an *eligible educational institution* by reference to section 25A to mean any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997, and certified by the U.S. Department of Education to be eligible to participate in a student aid program administered by that department. This category includes generally all accredited public, nonprofit, and proprietary postsecondary institutions. Consistent with section 221(e)(2), the proposed regulations provide that, for purposes of the qualified education loan interest deduction, eligible educational institutions also include institutions that conduct an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

Qualified higher education expenses are generally the same as the cost of attendance as determined by the eligible educational institution for purposes of calculating a student's financial need, in accordance with section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on August 4, 1997. Such expenses generally include tuition, fees, room, board, books, equipment, and other necessary expenses, such as transportation. However, for purposes of calculating qualified higher education expenses, the amount of such expenses must be reduced by educational assistance that the student receives and excludes from gross income under section 117 (qualified scholarships), section 127 (employer-provided educational assistance), section 135 (redemption of U.S. savings bonds), and section 530 (distributions from education IRAs). In addition, such expenses must be reduced by a veterans' or member of the armed forces' educational assistance allowance under chapter 30, 31, 32, 34 or 35 of title 38 United States Code, or under chapter 1606 of title 10, United States Code, and any other educational assistance that is excludable from the student's gross income (other than as a gift, bequest, devise or inheritance within the meaning of section 102(a)).

The qualified education loan interest deduction generally is available only for interest payments made during the first 60 months in which interest payments are required on the qualified education loan. The proposed regulations provide that the 60-month period commences with the month in which a loan first enters mandatory repayment status and continues to elapse regardless of whether payments are actually made, unless the repayment period is suspended for a period of deferment or forbearance. The 60-month period may expire at different times for different loans of the same borrower.

The date on which a qualified education loan enters repayment status is determined by reference to the loan agreement or the federal regulations governing the applicable federal postsecondary education loan program.

The proposed regulations provide that a deduction is allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month prior to the expiration of the 60-month period. A deduction is not allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month after the expiration of the 60-month period.

The proposed regulations provide that a qualified education loan and all refinancings of that loan are treated as a single loan for purposes of calculating the 60-month period.

Consistent with section 221(d), as amended by RRA '98, the proposed regulations provide special rules for calculating the 60-month period for consolidated loans or collapsed loans. These rules generally mirror the guidance contained in Notice 98–7 and provide that the 60-month period begins on the most recent date on which any of the underlying loans entered repayment status. See Conf. Rep. No. 599, 105th Cong., 2d Sess., at 339 (1998).

If a qualified education loan entered repayment status prior to January 1, 1998 (the effective date of section 221), the taxpayer is not entitled to deduct any interest paid during that portion of the 60-month period occurring prior to January 1, 1998. A deduction is allowed only for interest due and paid during that portion, if any, of the 60-month period remaining after December 31, 1997.

General tax principles apply in determining what is deductible interest for purposes of section 221. However, to assist taxpayers, the proposed regulations specifically provide that loan origination fees and capitalized interest are *interest* and are deductible under section 221 as the stated principal amount of the qualified education loan is repaid.

Proposed Effective Date

These regulations are proposed to be effective for interest paid after the date they are published in the **Federal Register** as final regulations. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and on how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The IRS recognizes that persons outside the Washington, DC, area may also wish to testify at the public hearing through videoconferencing. Requests to include videoconferencing sites must be received by March 22, 1999. If the IRS receives sufficient indications of interest to warrant videoconferencing to a particular city, and if the IRS has videoconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests.

The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in an announcement in the **Federal Register**.

Drafting Information.

The principal author of these regulations is John P. Moriarty of the Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.221–1 also issued under 26 U.S.C. 221(d). * * *

Par. 2. Section 1.221–1 is added under the undesignated centerheading ''Additional Itemized Deductions For Individuals'' to read as follows:

§ 1.221–1 Deduction for interest on qualified education loans.

(a) *In general.* An individual taxpayer is allowed a deduction under section 221 from gross income for certain interest paid during the taxable year on a qualified education loan. The deduction is allowed only with respect to interest paid on a qualified education loan during the first 60 months that interest payments are required under the terms of the loan. See paragraph (e) of this section for rules relating to the 60-month rule.

(b) *Eligibility*—(1) *Taxpayer must be legally obligated to make interest payments.* A taxpayer is allowed a deduction under section 221 only if the taxpayer is legally obligated to make interest payments under the terms of the qualified education loan.

(2) *Claimed dependents not eligible*—(i) *In general.* An individual is not allowed a deduction under section 221 for a taxable year if the individual is a dependent (as defined in section 152) for whom a deduction under section 151 is claimed on another taxpayer's federal income tax return for the same taxable year (or, in the case of a fiscal year taxpayer, the taxable year beginning in the same calendar year as the individual's taxable year).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Student not claimed as dependent. Student A pays $750 of interest on qualified education loans during 1998. Student A's parents do not claim her as a dependent for 1998. Assuming all other relevant requirements are met, Student A may deduct the $750 of interest paid in 1998 under section 221.

Example 2. Student claimed as dependent. Student B pays $750 of interest on qualified education loans during 1998. Only Student B is legally obligated to make the payments. Student B's parent claims him as a dependent and a deduction under section 151 is allowed with respect to Student B in computing the parent's 1998 federal income tax. Neither Student B nor Student B's parent may deduct the $750 of interest paid in 1998 under section 221.

(3) *Married taxpayers.* If a taxpayer is married as of the close of the taxable year, a deduction under this section is allowed only if the taxpayer and the taxpayer's spouse file a joint return for that taxable year.

(c) *Maximum deduction.* In any taxable year, the amount allowed as a deduction under section 221 may not exceed the amount determined in accordance with the following table:

Taxable year beginning in:	Maximum deduction
1998	$1,000
1999	1,500
2000	2,000
2001 and thereafter	2,500

(d) *Limitation based on modified adjusted gross income*—(1) *In general.* The deduction allowed under section 221 is phased out ratably for taxpayers with modified adjusted gross income between $40,000 and $55,000 ($60,000 and $75,000 for married individuals who file a joint return). Taxpayers with modified adjusted gross income of $55,000 or above (or $75,000 or above for joint filers) are not allowed a deduction under section 221.

(2) *Modified adjusted gross income defined.* The term *modified adjusted gross income* means the adjusted gross income (as defined in section 62) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 (relating to income earned abroad or from certain U.S. possessions or Puerto Rico). Adjusted gross income must be determined under this section after taking into account the exclusions, deductions and limitations provided for by sections 86 (social security and tier 1 railroad retirement benefits), 135 (redemption of qualified U.S. savings bonds), 137 (adoption assistance programs), 219 (deductible IRA contributions) and 469 (limitation on passive activity losses and credits).

(3) *Inflation adjustment.* For taxable years beginning after 2002, the amounts in paragraph (d)(1) of this section will

be increased for inflation occurring after 2001 in accordance with section 1(f)(3). If any amount adjusted under this paragraph (d)(3) is not a multiple of $5,000, the amount will be rounded to the next lowest multiple of $5,000.

(e) *60-month rule*—(1) *General rule.* A deduction for interest paid on a qualified education loan is allowed only for payments made during the first 60 months that interest payments are required on the loan. The 60-month period begins on the date the qualified education loan first enters repayment status and ends 60 months later, unless the period is suspended for periods of deferment or forbearance within the meaning of paragraph (e)(3) of this section. The 60-month period continues to elapse regardless of whether the required interest payments are actually made. The date on which the qualified education loan first enters repayment status is determined under the terms of the loan agreement or, in the case of a loan issued or guaranteed under a federal postsecondary education loan program, under applicable federal regulations. For special rules relating to loan refinancings, consolidated loans, and collapsed loans, see paragraph (h)(1) of this section.

(2) *Loans that entered repayment status prior to January 1, 1998.* In the case of any qualified education loan that entered repayment status prior to January 1, 1998, no deduction is allowed under section 221 for interest paid during the portion of the 60-month period described in paragraph (e)(1) of this section that occurred prior to January 1, 1998. A deduction is allowed only for interest due and paid during that portion, if any, of the 60-month period remaining after December 31, 1997.

(3) *Periods of deferment or forbearance.* The 60-month period described in paragraph (e)(1) of this section is suspended for any period when interest payments are not required on a qualified education loan because the borrower has been granted deferment or forbearance (including postponement in anticipation of cancellation). However, in the case of a qualified education loan that is not issued or guaranteed under a federal postsecondary education loan program, the 60-month period will be suspended under this paragraph (e)(3) only if the borrower satisfies one of the conditions for deferment or forbearance established by the U.S. Department of Education for federal student loan programs under Title IV of the Higher Education Act of 1965, such as half-time study at a postsecondary educational institution, study in an approved graduate fellowship program or in an approved rehabilitation program for the disabled, inability to find full-time employment, economic hardship, or the performance of services in certain occupations or federal programs. The 60-month period is not suspended if, under the terms of the loan—

(i) Interest continues to accrue while the loan is in deferment or forbearance; and

(ii) The taxpayer has the option of paying the interest currently or requesting that the interest be capitalized, and the taxpayer elects to make current interest payments.

(4) *Late payments.* A deduction is allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month prior to the expiration of the 60-month period. A deduction is not allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month after the expiration of the 60-month period.

(5) *Examples.* The following examples illustrate the rules of this paragraph (e). In the examples, assume that the institution is an eligible educational institution, the loan is a qualified education loan, and the student is legally obligated to make interest payments under the terms of the loan:

Example 1. Payment prior to 60-month period. Student C obtains a loan to attend College V. The terms of the loan provide that interest accrues on the loan while C earns his undergraduate degree but that C is not required to begin making payments of interest until six full calendar months after he graduates. Nevertheless, C voluntarily pays interest on the loan while attending College V. C is not allowed a deduction for interest paid while attending College V because the payments were made during a month prior to the start of the 60-month period.

Example 2. Deferment option not exercised. The facts are the same as *Example 1,* except that Student C makes no payments on the loan while C is enrolled at College V. C graduates in June, 1999 and is required to begin making monthly payments of principal and interest on the loan in January, 2000. The 60-month period described in paragraph (e)(1) of this section begins in January, 2000. In August, 2000, C enrolls in graduate school on a full-time basis. Under the terms of the loan, C may apply for deferment of the loan payments while C is enrolled in graduate school. However, C elects not to apply for deferment and continues to make monthly payments on the loan during graduate school. Assuming all other relevant requirements are met, C may deduct interest paid on the loan during the 60-month period beginning in January, 2000, including interest paid while C was enrolled in graduate school, but elected not to defer payment.

Example 3. Late payment, within 60-month period. The facts are the same as *Example 2,* except that, after the loan enters repayment status in January, 2000, Student C makes no interest payments until March, 2000. In March, 2000, C pays interest required to be paid for the months of January, February, and March, 2000. Assuming all other relevant requirements are met, C is allowed a deduction for the interest paid in March for the months of January, February, and March because the interest payments were required under the terms of the loan and were paid within the 60-month period, even though the January and February interest payments may be late.

Example 4. Late payment during deferment but within 60-month period. The terms of Student D's qualified education loan require her to begin making monthly payments of interest on the loan in January, 2000. The 60-month period described in paragraph (e)(1) of this section begins in January, 2000. D fails to make the required interest payments for the months of November and December, 2000. In January, 2001, D enrolls in graduate school on a half-time basis. Under the terms of the loan, D is eligible for deferment of the loan payments due while D is enrolled in graduate school. The deferment is granted effective January 1, 2001. In March, 2001, while the loan is in deferment, D pays the interest due for the months of November and December, 2000. Assuming all other relevant requirements are met, D is allowed a deduction for interest paid in March, 2001 for the months of November and December, 2000 because the interest payments were made paid prior to the expiration of the 60-month period, even though the November and December interest payments were late and were made while the loan was in deferment.

Example 5. 60-month period. The facts are the same as *Example 4* except that Student D graduates from graduate school in December, 2004 and is required to begin making monthly payments of interest on the loan in June, 2005. As of January, 2001, when the loan entered deferment status, 12 months of the 60-month period had elapsed (January–December, 2000). As of June, 2005, when the loan re-enters repayment status, there are 48 months remaining in the 60-month period for that loan.

Example 6. 60-month period. The terms of Student E's qualified education loan require him to begin making monthly payments of interest on the loan in November, 1999. The 60-month period described in paragraph (e)(1) of this section begins in November, 1999. In January, 2000, E enrolls in graduate school on a half-time basis. As permitted under the terms of the loan, E applies for deferment of the loan payments due while E is enrolled in graduate school. While awaiting formal notification from the lender that his request for deferment has been granted, E pays interest due for the month of January, 2000. In February, 2000, E receives notification from the lender that deferment has been granted, effective as of January 1, 2000. Assuming all other requirements are met, E is allowed a deduction for interest paid in January, 2000, prior to his receipt of the notification, even though the deferment was granted retroactive to January 1, 2000. As of February, 2000, there are 57 months remaining in the 60-month period for that loan.

Example 7. Reduction of 60-month period for months prior to January 1, 1998. The first payment on a qualified education loan is due on January 1, 1997. Thereafter, interest is required to be paid on a monthly basis. The 60-month period for this loan begins on January 1, 1997. However, no deduction is allowed for interest paid by the borrower prior to January 1, 1998, the effective date of section 221. Assuming all other relevant requirements are met, the borrower may deduct interest due and paid on the loan during the 48 months beginning on January 1, 1998 (unless such period is extended for periods of deferment or forbearance under paragraph (e)(3) of this section).

(f) *Definitions*—(1) *Eligible educational institution.* In general, an *eligible educational institution* means any college, university, vocational school or other post-secondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on August 5, 1997, and is certified by the U.S. Department of Education to be eligible to participate in student aid programs administered by the Department, as described in section 25A(f)(2). In addition, for purposes of this section, an eligible educational institution also includes an institution that conducts an internship or residency program leading to a degree or certificate awarded by an institution, a hospital, or a health care facility that offers postgraduate training.

(2) *Qualified higher education expenses*—(i) *In general. Qualified higher education expenses* means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on August 4, 1997), at an eligible educational institution, reduced by the amounts described in paragraph (f)(2)(ii) of this section. Consistent with section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, the cost of attendance is determined by the eligible educational institution and includes tuition and fees normally assessed a student carrying the same academic workload, an allowance for room and board, and an allowance for books, supplies, transportation and miscellaneous expenses of the student.

(ii) *Reductions.* Qualified higher education expenses must be reduced by any amount paid to or on behalf of a student with respect to such expenses that is—

(A) A qualified scholarship that is excludable from income under section 117;

(B) A veterans' or member of the armed forces' educational assistance allowance under chapter 30, 31, 32, 34 or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code;

(C) Employer-provided educational assistance that is excludable from income under section 127;

(D) Any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of section 102(a));

(E) Any amount excluded from gross income under section 135 (relating to the redemption of United States savings bonds); or

(F) Any amount distributed from an education individual retirement account described in section 530 and excluded from gross income.

(3) *Qualified education loan*—(i) *In general. Qualified education loan* means indebtedness incurred by a taxpayer solely to pay qualified higher education expenses that are—

(A) Incurred on behalf of a student who is the taxpayer, the taxpayer's spouse, or a dependent (as defined in section 151) of the taxpayer at the time the indebtedness is incurred;

(B) Paid or incurred within a reasonable period of time before or after the indebtedness is incurred. Qualified higher education expenses that are paid with the proceeds of education loans that are part of a federal postsecondary education loan program are deemed to meet this requirement. For other loans, except as provided in paragraph (f)(3)(ii) of this section, what constitutes a reasonable period of time is determined based on all the relevant facts and circumstances; and

(C) Attributable to education provided during an academic period, as described in section 25A and the regulations thereunder, when the student is an eligible student as defined in section 25A(b)(3) (requiring that the student be a degree candidate carrying at least one-half the normal full-time workload).

(ii) *Reasonable period safe harbor.* For purposes of paragraph (f)(3)(i)(B) of this section, qualified higher education expenses are treated as paid or incurred within a reasonable period of time before or after the indebtedness is incurred if the expenses relate to a particular academic period and the loan proceeds are disbursed within a period that begins 60 days prior to the start of that academic period and ends 60 days after the end of that academic period.

(iii) *Related party.* A loan made by a person who is related to the borrower, within the meaning of section 267(b) or 707(b)(1), is not a qualified education loan. For example, a parent or grandparent of the borrower is a related person. In addition, a loan made under any qualified employer plan as defined in section 72(p)(4) or under any contract referred to in section 72(p)(5) is not a qualified education loan.

(iv) *Not federally issued or guaranteed.* A loan does not have to be issued or guaranteed under a federal postsecondary education loan program to be a qualified education loan.

(4) *Examples.* The following examples illustrate the rules in this paragraph (f):

Example 1. Eligible educational institution. University Z is a postsecondary educational institution described in section 481 of the Higher Education Act of 1965. University Z has completed the necessary paperwork and has been certified by the U.S. Department of Education as eligible to participate in federal financial aid programs administered by the Department, although University Z chooses not to participate. University Z is an eligible educational institution.

Example 2. Qualified education loan. Student F borrows money from a commercial bank to pay qualified higher education expenses related to his enrollment on a half-time basis in a graduate program at an eligible educational institution. All the loan proceeds are used to pay qualified higher education expenses incurred within a reasonable period of time after the indebtedness is incurred. The loan is not federally guaranteed. The commercial bank is not related to Student F within the meaning of section 267(b) or 707(b)(1). The fact that Student F's loan is not federally issued or guaranteed does not prevent the loan from being a qualified education loan within the meaning of section 221.

Example 3. Qualified higher education expenses. Student G receives a $3,000 qualified scholarship for the 1999 Fall semester, that is excludable from F's gross income under section 117. Student G receives no other forms of financial assistance with respect to the 1999 Fall semester. Student G's cost of attendance for the Fall semester, as determined by Student G's eligible educational institution for purposes of calculating a student's financial need in accordance with section 472 of the Higher Education Act, is $16,000. For the 1999 Fall semester, Student G has qualified higher education expenses of $13,000 (the cost of attendance as determined by the institution ($16,000) reduced by the qualified scholarship proceeds excludable from gross income ($3,000)).

Example 4. Qualified education loan. Student H signs a promissory note for a loan on August 15, 1999, to pay for qualified higher education expenses for the 1999 Fall and 2000 Spring semesters. On August 20, 1999, loan proceeds are disbursed by the lender to Student H's college and credited to H's account to pay qualified higher education expenses for the 1999 Fall semester, that begins on August 23, 1999. On January 25, 2000, additional loan proceeds are disbursed by the lender to Student H's college and credited to H's account to pay qualified higher education expenses for the 2000 Spring semester, that began on January 10,

2000. Student H's qualified higher education expenses for the two semesters are paid within a reasonable period of time, as the first loan disbursement was made within 60 days prior to the start of the Fall 1999 semester and the second loan disbursement was made during the Spring 2000 semester.

Example 5. Mixed-use loans. Student I signs a promissory note for a loan which is secured by I's personal residence. Part of the loan proceeds will be used to pay for certain improvements to I's residence and part of the loan proceeds will be used to pay qualified higher education expenses of I's spouse. Because the loan is not incurred by I solely to pay qualified higher education expenses, the loan is not a qualified education loan.

(g) *Denial of double benefit.* No deduction is allowed under this section for any amount for which a deduction is allowed under another provision of Chapter 1 of the Internal Revenue Code.

(h) *Special rules*—(1) *60-month limitation*—(i) *Refinancing.* A qualified education loan and all refinancings of that loan are treated as a single loan for purposes of calculating the 60-month period described in paragraph (e)(1) of this section.

(ii) *Consolidated loans.* A consolidated loan is a single loan that refinances more than one qualified education loan of a borrower. For consolidated loans, the 60-month period described in paragraph (e)(1) of this section begins on the most recent date on which any of the underlying loans entered repayment status and includes any subsequent month in which the consolidated loan is in repayment status.

(iii) *Collapsed loans.* A collapsed loan is two or more qualified education loans of a single borrower that are treated as a single qualified education loan for loan servicing purposes and are not separately accounted for by the lender or servicer. For a collapsed loan, the 60-month period described in paragraph (e)(1) of this section begins on the most recent date on which any of the underlying loans entered repayment status and includes any subsequent month in which any of the underlying loans is in repayment status.

(2) *Loan origination fees and capitalized interest*—(i) *In general.* Loan origination fees (other than any fees for services) and capitalized interest are interest and are deductible under this section.

(ii) *Capitalized interest defined. Capitalized interest* means any accrued and unpaid interest on a qualified education loan that is capitalized by the lender (in accordance with the terms of the loan) and added to the outstanding principal balance of the qualified education loan.

(iii) *Allocation of payments.* Loan origination fees and capitalized interest are deemed to be paid by the taxpayer when principal is repaid on the qualified education loan. Accordingly, the taxpayer may deduct the portion of a stated principal payment that is treated as the payment of any loan origination fees or capitalized interest on the loan. See §§ 1.446–2(e) and 1.1275–2(a) for rules on how to allocate payments between interest and principal. In general, under these rules, a payment (regardless of its label) is treated first as a payment of interest to the extent of the interest that has accrued and remains unpaid as of the date the payment is due, second as a payment of any loan origination fees or capitalized interest, until such amounts have been reduced to zero, and third as a payment of principal.

(3) *Examples.* The following examples illustrate the rules of this paragraph (h):

Example 1. Refinancing. Student J obtains a qualified education loan to pay for an undergraduate degree at an eligible educational institution. After graduation, Student J is required to make monthly interest payments on the loan beginning in January 2000. Student J makes the required interest payments for 15 months. In April 2001, Student J borrows money from another lender to be used exclusively to repay the first qualified education loan. The new loan requires interest payments to start immediately. At the time Student J is required to make interest payments on the new loan there are forty five months remaining of the original 60-month period referred to in paragraph (e)(1) of this section.

Example 2. Collapsed loans. To finance his education, Student K obtains four separate qualified education loans from Lender B. The loans enter repayment status on different dates. After all of Student K's loans have entered repayment status, Lender B informs Student K that all four loans will be transferred to Lender C. Following the transfer, Lender C treats the loans as a single loan for loan servicing purposes; Lender C sends Student K a single statement that shows the total principal and interest, and does not keep separate records with respect to each loan. The 60-month period described in paragraph (e)(1) of this section begins on the most recent date on which any of Student K's four loans entered repayment status.

Example 3. Capitalized interest. Interest on Student L's qualified education loan accrues while Student L is in school, but Student L is not required to make any payments on the loan until six months after he graduates. At that time, all accrued but unpaid interest is capitalized by the lender and is added to the outstanding principal amount of the loan. Thereafter, Student L is required to make monthly payments of interest and principal on the loan. For purposes of section 221, interest includes both stated interest and capitalized interest. Therefore, in determining the total amount of interest paid on the qualified education loan during the 60-month period described in paragraph (e)(1) of this section, Student L may deduct any principal payments that are treated as payments of capitalized interest under paragraph (h)(4) of this section.

(i) *Effective date.* This section applies to interest due and paid after December 31, 1997, on a qualified education loan.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–986 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

Minerals Management Service

30 CFR Parts 208, 241, 242, 243, 250, and 290

43 CFR Part 4

RIN 1010–AC21

Meeting on Proposed Rule—Appeals of MMS Orders

AGENCY: Office of Hearings and Appeals and Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of Hearings and Appeals (OHA), the Bureau of Indian Affairs and the Minerals Management Service (MMS) published a proposed rule in the **Federal Register** on January 12, 1999 (64 FR 1930), to amend the procedures for appeals of MMS orders and other related matters.

OHA and MMS will hold a public meeting to discuss the proposed rule and receive public comments. We invite interested parties to attend and participate in this meeting.

DATES: The meeting will be held on Tuesday, February 16, 1999, from 9:00 a.m. until 4:00 p.m.; Central Standard Time.

ADDRESSES: The meeting will be held at MMS's Houston Compliance Division Office, in Room 104, at 4141 North Sam Houston Parkway East, Houston, TX 77032.

FOR FURTHER INFORMATION CONTACT: Ms. Dixie Lee Pritchard, Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, TX 77032; telephone (713) 546–4419; fax numbers (713) 546–6011; e-Mail Dixie.Lee.Pritchard@mms.gov or David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, CO 80225–

0165; telephone (303) 231–3432; fax number (303) 231–3385; e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public to discuss the proposed rule for appeals of MMS orders. The comment period for this proposed rule closes on March 15, 1999. The intent of the meeting is to provide information to, and receive comments from oil, gas, solid mineral and geothermal companies, trade associations, States, Indian mineral owners (tribes and individuals), and any other interested parties concerning the variety of issues contained in the proposed rule.

Space is limited. Attendees should reserve slots with Ms. Dixie Lee Pritchard at the telephone number in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than February 5, 1999. For building security measures, each person will be required to sign in and may be required to present a picture identification to gain entry to the meeting.

Dated: January 13, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–1266 Filed 1–20–99; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 009–FIP FRL–6221–3]

RIN 2060–A122

Revision to Promulgation of Federal Implementation Plan for Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or ''the Act''), EPA is proposing amendments to the moderate area federal implementation plan (FIP) for the Phoenix PM–10 nonattainment area (63 FR 41326, August 3, 1998). These amendments would modify the fugitive dust rule to add or replace certain test methods, include coverage of unpaved roads neither owned nor maintained by a public entity and allow alternative control measures (ACMs) to be implemented without prior EPA approval.

EPA recently established a new standard for PM–2.5 and also revised the PM–10 standards; however, today's action does not address those standards.

DATES: Written comments will be accepted until March 8, 1999. EPA does not currently plan on holding a public hearing. If EPA receives a significant number of requests for a public hearing on the contents of today's proposal, EPA will schedule and notify the public of the hearing in a separate notice.

ADDRESSES: Written comments on EPA's proposed FIP amendments must be received by EPA at the address below. Comments should be submitted (in duplicate if possible) to: EPA Region 9, 75 Hawthorne Street (AIR4), San Francisco, CA 94105, Attn. Karen Irwin.

A copy of docket No. A–98–42 containing material relevant to EPA's proposed action is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Eleanor Kaplan (415) 744–1159 to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the docket No. A–98–42 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic Availability: This document is also available as an electronic file on EPA's Region 9 Air Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Karen Irwin (415) 744–1903.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Purpose of Today's Proposal

On August 3, 1998 (63 FR 41326), EPA finalized a FIP for the Phoenix PM–10 nonattainment area (the ''final FIP''). Readers should refer to 63 FR 41326 for details of the history and contents of the final FIP.

The final FIP includes a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads codified at 40 CFR § 52.128 (63 FR 41326, 41350), hereafter referred to as ''the final FIP rule''.[1] Today's proposal addresses only the specific provisions related to the test methods, the alternative control measures (ACMs) and the unpaved road requirements of the final FIP rule as discussed below. EPA will accept comments only on the proposed amendments to these FIP rule provisions and not on any other aspects of the final FIP.

As promulgated on August 3, 1998 (63 FR 41326), the final FIP rule contains test methods for ascertaining compliance with the FIP's emission requirements. EPA has conducted additional technical field work in Phoenix on these test methods. While the test methods in the final FIP were the best available methods known to EPA at the time of promulgation, additional analysis has indicated others may be more accurate and comprehensive. In today's proposal, EPA is proposing and accepting comment on additional, new test methods for the FIP rule.

EPA is also proposing to eliminate the requirement to submit ACMs to EPA for approval in order to remove an unnecessary administrative burden on the regulated community. Finally, EPA is proposing to require privately owned and privately maintained unpaved roads to meet the same RACM requirements as roads that are owned or maintained by a public entity.

II. Summary of Proposed Amendments

A. Test Methods

1. Adding a Silt Content Test Method for Unpaved Roads and Unpaved Parking Lots

The final FIP rule contains an opacity standard of twenty (20) percent, or Ringlemann 1, for unpaved roads and unpaved parking lots. Compliance with this standard is to be tested using visible emissions test methods included in the final Phoenix FIP rule.[2] Field testing has identified certain circumstances where

[1] EPA promulgated the fugitive dust rule as part of its court-ordered obligation to provide for the implementation of Reasonably Available Control Measures (RACM) (required by section 189(a)(1)(C) of the Clean Air Act) in the Phoenix PM–10 nonattainment area.

[2] Reference Method 9 (40 CFR part 60, appendix A) and Methods 203A and 203C. Appendix A.I. to § 52.128 (63 FR 41326, 41353–41355).

this test method may be difficult to use. Consequently, EPA is proposing an additional, new test method that the Agency believes may be more appropriate and accurate for testing compliance of fugitive dust sources covered under the final FIP rule.

The new test method involves measuring silt content on unpaved roads and unpaved parking lots according to a sieve field procedure. The emission rate of fine particles is proportional to silt content (amount of fine particles in any given soil sample), such that the higher the silt content the higher the propensity for a source to release fine particles. The proposed sieve field procedure to measure silt content on unpaved roads and unpaved parking lots involves collecting a sample from the source in an area the size of one square foot using a brush and dustpan. The sample is weighed, placed into a stack of sieves with various mesh openings and shaken vigorously for one minute. Material that collects in the bottom of the unit is weighed and its silt content estimated using simple calculations provided in the proposed test method. EPA successfully conducted the proposed silt content test method in the Phoenix nonattainment area. The proposed silt content standards associated with the sieve test method are six (6) percent or less for unpaved roads and eight (8) percent or less for unpaved parking lots. These standards are based on laboratory analysis of samples taken from unpaved sources in the Phoenix nonattainment area during EPA's field tests.[3]

EPA is also proposing an alternative to conducting the silt content test method. Samples collected from sources may be taken to an independent testing laboratory for silt content analysis according to an EPA AP–42 test method.[4] This option would provide additional flexibility to owners and operators of unpaved roads and unpaved parking lots.

EPA is taking comment on this proposed additional test method, which is expected to provide greater compliance certainty under all circumstances. A source in violation of either the rule's existing opacity standard or the proposed silt content standard would not be in compliance with the rule. Since this additional test method may alleviate the need for the existing opacity test method, EPA is also accepting comment on whether or not to retain the opacity test method in the final FIP rule.

2. Adding a New Visible Crust Test Method or Replacing the Visible Crust Test Method for Vacant Lots

The final FIP rule's test method for measuring visible crust thickness on vacant lots involves breaking off a piece of crust, checking whether the crust crumbles easily and measuring its thickness with a ruler.[5] EPA received public comments suggesting that this test method would not always confirm the existence of a stabilizing crust. During field testing in Arizona, EPA attempted both the current test method and an alternative test method that was suggested by EPA's contractor.[6] EPA believes the alternative test method would accomplish the same objective as the current test method, be similarly easy to use, more accurately repeatable by various parties, and more indicative of whether a sufficiently stabilizing crust exists. The alternative test method involves dropping a small steel ball from a height of one foot in select areas and checking to see whether the ball penetrates the surface or causes loose grains to appear. If so, this indicates that the crust is too thin to resist wind. A source in violation of either the existing or proposed visible crust standard would not be in compliance with the rule. EPA is accepting public comment on whether this alternative visible crust test method should be used in addition to or in place of the existing visible crust test method.

3. Adding a Procedure to the Standing Vegetation Test Method for Vacant Lots

The final FIP rule contains a test method for standing vegetation.[7] In this method, the vegetation is counted within a survey area and its average dimensions measured. During field tests conducted in Arizona,[8] EPA noted that some vegetation was less dense than others. Density affects vegetation's ability to protect against wind erosion. Without providing additional guidance on how to measure a plant or weed's dimensions taking density into account, EPA is concerned that the existing standing vegetation test methods would not necessarily be accurately conducted and repeated by different individuals to achieve the same results. Therefore, EPA is proposing to add a procedure involving the use of a grid with one inch or half-inch squares to help ensure that various vegetative structures can be assessed accurately and consistently.[9] This procedure would apply only when open air space exists within a plant or weed's perimeter. The proposed changes include minor clarifications to the standing vegetation test method.

B. Unpaved Roads

In the final FIP rule, EPA finalized requirements for unpaved roads that are publicly owned and/or operated (i.e. maintained). This includes privately owned roads that are publicly maintained. EPA is proposing to include in the FIP rule unpaved privately owned roads that are privately maintained or not maintained. However, roads on which public access is not allowed or that have fewer than 250 average daily trips (ADT) would remain exempt. The purpose of this proposed modification is to ensure that all *public access* roads with ADT levels of 250 or greater are controlled, regardless of whether a public entity owns or maintains them.[10] Roads which would be covered under this proposal that are not currently covered under the final rule include:

Privately owned roads that are privately maintained; and

Privately owned roads that are not maintained.

EPA is also proposing to clarify the definition of an unpaved road as that used by motor vehicles or off-road motor vehicles.

While EPA does not generally expect the newly added types of roads to meet or exceed 250 ADT, EPA is proposing that the FIP rule cover any such potential sources. It is EPA's intention

[3] Field tests were conducted on May 27–28, 1998. Results from the field tests can be found in the document titled ''Analysis of Results from Field Tests in the Phoenix Nonattainment Area'' by Chatten Cowherd, MRI Research Institute, 425 Volker Blvd., Kansas City, Missouri, June 12, 1998.

[4] ''Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples'', (Fifth Edition, Volume I, Appendix C.2, 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

[5] 63 FR 41326, 41355.

[6] Chatten Cowherd, MRI Research Institute, 425 Volker Blvd., Kansas City, Missouri.

[7] 63 FR 41326, 41356. Testing for standing vegetation is not necessary where a visible crust exists. However, if a disturbed surface area fails the visible crust test and standing vegetation is present, the lot may actually be stabilized depending on the extent to which the vegetation protects against wind erosion. The inclusion of more than one test method for vacant lots in the FIP rule adds compliance flexibility to sources by acknowledging that a disturbed surface does not necessarily need to be crusted in order to be stabilized if it contains sufficient vegetation or its soil has a high wind-resistance threshold. In fact, the FIP rule allows a disturbed vacant lot surface to be deemed stabilized if it meets just one out of a total of five criteria for stability.

[8] May 27–28, 1998.

[9] The procedure was provided to EPA by Larry Hagen, Agricultural Engineer, United States Department of Agriculture, Wind Erosion Research Unit, 2004 Throckmortion Hall, Kansas State University, Manhatten, Kansas 66506.

[10] Note: haul roads are permitted sources under Maricopa County Environmental Services Division's rule 310. A haul road would only be subject to the FIP rule requirements if it is not a permitted source under Rule 310, has an ADT level of 250 or greater and is publicly accessible.

to eliminate the public or private classification of the owner/operator as a factor in whether the road is controlled. As discussed above, EPA does not expect that there will be many roads which will be newly covered under the FIP rule as a result of this change because most unpaved roads which are not publicly accessible nor publicly maintained are not likely to have a high level of ADT. It should also be noted that the classification of the owner/operator as public or private is not a factor in the other two source categories covered under the FIP rule—namely unpaved parking lots and vacant lots. The RACM implementation deadline for all existing unpaved roads would remain consistent with the current deadline for publicly owned or operated roads (June 10, 2000).

EPA requests comment on the potential effects of extending control requirements to privately owned public access roads that are also privately maintained. EPA anticipates receiving additional information on the extended coverage of roads due to this proposal by the end of this year.[11] When available, EPA will disseminate this information to the public and take it into consideration along with any comments received on this proposal before finalizing requirements on privately owned/maintained public access roads.

C. Alternative Control Measures

In the final FIP rule, ACMs are allowed provided that they are submitted to EPA and receive EPA approval.[12] ACMs are any RACM not specifically listed in the rule that can meet the rule's stabilization standards for each source category.[13] EPA is proposing to amend the final FIP rule such that ACMs will not require prior EPA approval. EPA believes that since the FIP rule contains test methods which indicate whether a surface is stabilized, owners/operators can be allowed flexibility as to the type of RACM applied as long as the control measure results in a stabilized surface.[14] Elimination of prior EPA approval for ACMs will decrease the FIP rule's implementation cost insofar as regulated parties will not need to commit time and resources in preparing ACMs and submitting them to EPA.

The elimination of the requirement to submit ACMs for prior EPA approval will not affect the owners'/operators' responsibility to implement RACM. In fact, by emphasizing the intended result, as opposed to the type of control, EPA hopes to increase owners'/operators' understanding that their responsibility under the FIP rule will remain until a source is controlled even if the owner/operator attempts a control measure that fails to stabilize the surface.

III. Administrative Requirements

A. Executive Order (E.O. 12866)

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, 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.

Due to potential novel policy issues this action is considered a significant regulatory action and therefore must be reviewed by OMB. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 12875

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

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

C. Executive Order 13045

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

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If 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,

[11] EPA has entered into a contract with Pacific Environmental Services to collect information on the number, location and owners/operators of unpaved roads, unpaved parking lots and disturbed vacant lots potentially covered under the FIP rule requirements.

[12] 63 FR 41326, 41352.

[13] The ACM provisions of the rule do not otherwise authorize any modification of the FIP rule's requirements.

[14] Owners/operators may not, however, use dust suppressants that are prohibited by local, state or federal laws or regulations.

Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility Analysis

1. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever EPA is required to publish notice of general rulemaking, EPA must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of the proposal on small entities, unless the Administrator certifies that a proposed 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 government entities with jurisdiction over populations of less than 50,000.

For the purposes of this inquiry, as it applies to the proposed amendments to the federal fugitive dust rule (40 CFR § 52.128), EPA is assuming that the affected or potentially affected sources constitute ''small entities'' as defined by the RFA.

A detailed discussion of the RFA analysis for the final FIP is found in section V.B. at 63 FR 41326. In general, the proposed amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods as they currently exist in the rule. Thus, EPA believes that the amendments will not change the final FIP RFA analysis, except possibly to have a lesser impact on small entities.

2. RFA Analysis

a. *Proposed Amendments to Federal Rule for Unpaved Roads, Unpaved Parking Lots and Vacant Lots.* EPA believes that the proposed test method amendments will provide either more flexibility or an improved procedure for determining compliance with the FIP fugitive dust rule. The proposed silt content test method would allow persons who are not certified in visible emissions training to test the stability of an unpaved road or unpaved parking lot by using an alternative method to the opacity test method. EPA plans to ensure that the necessary sieve units are available for loan by local entities to regulated sources. Also, the proposed visible crust test method accomplishes the same objective as the current visible crust test method yet is more practical and can be accurately repeated by various parties. Finally, the proposed additional procedure to assist parties in measuring frontal silhouette area of various vegetative structures are merely intended to address circumstances that may arise in the field which are not addressed in the final FIP rule.

For unpaved roads, EPA is proposing to include unpaved roads that are not owned or operated by public entities. However, roads on which public access is not allowed or that have fewer than 250 ADT would remain exempt. EPA intends to simply eliminate the public or private classification of the owner/operator as a factor in whether the road is controlled. As discussed earlier, EPA does not expect that there will be many roads which will be newly covered under the FIP rule as a result of this change because most unpaved roads which are not publicly accessible or publicly maintained are not likely to have a high level of ADT.

Finally, EPA is today proposing to amend the final FIP rule such that ACMs will not require prior EPA approval. This proposed change would add to the rule's flexibility for source owners/operators and reduce the paperwork burden of the rule.

b. *Certification.* For reasons discussed above, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the proposed rule amendments. After consideration of the economic impacts of today's proposed rule amendments on small entities, I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

A detailed discussion of the UMRA requirements and how they are addressed can be found in section V.C. of the final FIP rulemaking (63 FR 41326). As explained above, today's proposed amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods currently in the rule. Thus, EPA believes that the amendments will not change the final FIP UMRA analysis, except possibly to have a lesser impact on the regulated entities.

G. Paperwork Reduction Act

The proposed test method and ACM amendments do not impact the information collection request analysis for the final FIP (EPA ICR 1855.02). For the proposed unpaved roads amendment, EPA does not generally expect the newly added types of roads for inclusion in the FIP rule to exceed the ADT de minimis level. Thus, in general, EPA believes that the proposed amendments to the final FIP rule do not affect the information collection requirements (EPA ICR 1855.02). The final FIP (63 FR 41326) provides more information on the information collection request requirements.

H. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, Sec. 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.

In this action, EPA has incorporated voluntary consensus standards where feasible (See proposed language for Appendix A to § 52.128, I.B(iv)). However, in most cases there are no applicable technical standards or field procedures specifically designed for the source categories at hand. OMB has reviewed and concurred on the applicable technical standards proposed in this revision.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

2. Section 52.128 is proposed to be amended as follows:

a. Revise paragraph (b)(16)(i).

b. Revise paragraph (b)(16)(ii)(A).

c. Revise paragraph (b)(18).

d. Add paragraph (d)(1)(i)(D) and remove the period at the end of paragraph (d)(1)(i)(C) and replace it with ''; or''.

e. Add paragraph (d)(2)(iv) and remove the period at the end of paragraph (d)(2)(iii) and replace it with ''; or''.

f. Add paragraph (d)(3)(ii)(E) and remove the period at the end of paragraph (d)(3)(ii)(D) and replace it with ''; or''.

g. Remove paragraph (d)(4) and redesignate paragraph (d)(5) as paragraph (d)(4).

h. Remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

§ 52.128 Rule for unpaved parking lots, unpaved roads and vacant lots.

* * * * *

(b) * * *

(16) *Stabilized Surface*—

(i) Any unpaved road or unpaved parking lot surface where:

(A) Any fugitive dust plume emanating from vehicular movement does not exceed 20 percent opacity as determined in section I.A of appendix A of this section; AND

(B) Silt content does not exceed six (6) percent for unpaved road surfaces or eight (8) percent for unpaved parking lot surfaces as determined by the test method in section I.B of appendix A of this section.

(ii) * * *

(A) A visible crust which is greater than 0.6 centimeters (cm) thick and is not easily crumbled between the fingers as determined in section II.1(i) of appendix A of this section AND is sufficient as determined in section II.1(ii) of appendix A of this section;

* * * * *

(18) *Unpaved Road*—Any road, equipment path or driveway used by motor vehicles or off-road motor vehicles that is not paved which is open to public access and owned/operated by any federal, state, county, municipal or other governmental or quasi-governmental agencies or any private entity or individual(s).

* * * * *

(d) * * *

(1) * * *

(i) * * *

(D) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

* * * * *

(2) * * *

(iv) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(3) * * *

(ii) * * *

(E) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

* * * * *

3. Appendix A to § 52.128 is proposed to be amended as follows:

a. In section I. by designating the text under Section I as A. and adding a heading.

b. Add section I.B.

c. Revise the heading of section II.1.

d. Designate the existing text of II.1 as II.1(i) and add II.1(ii).

e. Revise section II.4(ii).

f. Redesignate section II.4(iii) as section II.4(iv).

g. Redesignate section II.4(iv) as section II.4(v).

h. Add section II.4(iii).

Appendix A to § 52.128—Test Methods To Determine Whether a Surface Is Stabilized

I. Unpaved Roads and Unpaved Parking Lots

A. Opacity Observations

* * * * *

B. Silt Content

Conduct the following test method to achieve the silt content of unpaved road and unpaved parking lot surfaces.

(i) Collect a sample of loose surface material from an area 30 cm by 30 cm (1 foot by 1 foot) in size to a depth of approximately 1 cm using a brush and dustpan or other similar device. Collect the sample from a routinely-traveled portion of the surface which receives a preponderance of vehicle traffic, i.e. as commonly evidenced by tire tracks. Conduct sweeping slowly so that fine surface material is not released into the air. Only collect samples from surfaces that are not wet or damp due to precipitation or dew.

(ii) Obtain a shallow, lightweight container and a scale with readings in half ounce increments or less. Place the scale on a level surface and zero it with the weight of the empty container. Transfer the entire sample collected to the container, minimizing escape of particles into the air. Weigh the sample and record its weight.

(iii) Obtain and stack a set of sieves with the following openings: 4 mm, 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Pour the entire sample into the top sieve, minimizing escape of particles into the air by positioning the sieve/collector pan unit in an enclosed or wind barricaded area. Cover the sieve/collector pan unit with a lid. Shake the covered sieve/collector pan unit vigorously for a period of at least one (1) minute in both the horizontal and vertical planes. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for a complete separation of material in order to ensure that all material has been sifted to the finest sieve through which it can pass. If not, reassemble and cover the sieve/collector pan unit and shake it for period of at least one (1) minute. After disassembling the sieve/collector pan unit, transfer the material which is captured in the collector pan (silt fraction) into the lightweight container originally used to collect and weigh the sample. Minimize escape of particles into the air when transferring the material into the container. Weigh the container with the material from the collector pan and record its weight. Multiply the resulting weight by 0.38 if the source is an unpaved road or by 0.55 if the source is an unpaved parking lot, divide by the total sample weight and multiply by 100 to arrive at the percent silt content.

(iv) As an alternative to conducting the procedure described above in section I.B.(ii) and section I.B.(iii) of this appendix, the sample (collected according to section I.B.(i) of this appendix) may be taken to an independent testing laboratory or engineering facility for silt content analysis according to the following test method from ''Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples'', (Fifth Edition, Volume I, Appendix C.2.3 ''Silt Analysis'', 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

1. Objective—Several open dust emission factors have been found to be correlated with the silt content (<200 mesh) of the material being disturbed. The basic procedure for silt content determination is mechanical, dry sieving. For sources other than paved roads, the same sample which was oven-dried to determine moisture content is then mechanically sieved.

2.1 Procedure—Select the appropriate 20-cm (8-in.) diameter, 5-cm (2-in.) deep sieve sizes.

Recommended U. S. Standard Series sizes are ⅜ in., No. 4, No. 40, No. 100, No. 140, No. 200, and a pan. Comparable Tyler Series sizes can also be used. The No. 20 and the No. 200 are mandatory.

The others can be varied if the recommended sieves are not available, or if buildup on 1 particulate sieve during sieving indicates that an intermediate sieve should be inserted.

2.2 Obtain a mechanical sieving device, such as a vibratory shaker or a Roto-Tap® [1] without the tapping function.

2.3 Clean the sieves with compressed air and/or a soft brush. Any material lodged in the sieve openings or adhering to the sides of the sieve should be removed, without handling the screen roughly, if possible.

2.4 Obtain a scale (capacity of at least 1600 grams [g] or 3.5 lb) and record make, capacity, smallest division, date of last calibration, and accuracy. (See Figure A of this appendix)

2.5 Weigh the sieves and pan to determine tare weights. Check the zero before every weighing. Record the weights.

2.6 After nesting the sieves in decreasing order of size, and with pan at the bottom, dump dried laboratory sample (preferably immediately after moisture analysis) into the top sieve. The sample should weigh between ~400 and 1600 g (~0.9 and 3.5 lb). This amount will vary for finely textured materials, and 100 to 300 g may be sufficient when 90% of the sample passes a No. 8 (2.36 mm) sieve. Brush any fine material adhering to the sides of the container into the top sieve and cover the top sieve with a special lid normally purchased with the pan.

2.7 Place nested sieves into the mechanical sieving device and sieve for 10 minutes (min). Remove pan containing minus No. 200 and weigh. Repeat the sieving at 10-min intervals until the difference between 2 successive pan sample weighings (with the pan tare weight subtracted) is less than 3.0%. Do not sieve longer than 40 min.

2.8 Weigh each sieve and its contents and record the weight. Check the zero before every weighing.

2.9 Collect the laboratory sample. Place the sample in a separate container if further analysis is expected.

2.10 Calculate the percent of mass less than the 200 mesh screen (75 micrometers [μm]). This is the silt content.

Figure A. Example Silt Analysis Form

Silt Analysis

Date: ____________________

By: ____________________

Sample No: ____________________

Sample Weight (after drying) ____________

Material: ____________________

Pan + Sample: ____________________

Pan: ____________________

Split Sample Balance: ____________

Dry Sample: ____________________

Make ____________________

Capacity: ____________________

Smallest Division ____________

Final Weight ____________

$$\% \text{ Silt} = \frac{\textit{Net Weight} < 200 \textit{ Mesh}}{\text{Total Net Weight}} \times 100 = \_\_\_\_\%$$

SIEVING

Time: Start:	Weight (pan only)
Initial (Tare):	
10 min:	
20 min:	
30 min:	
40 min:	

Screen	Tare weight (screen)	Final weight (screen + sample)	Net weight (sample)	%
⅜ in.				
4 mesh				
10 mesh				
20 mesh				
40 mesh				
100 mesh				
140 mesh				
200 mesh				
Pan				

(v) The percent silt content for any given unpaved road surface or unpaved parking lot surface shall be based on the average of at least three (3) samples that are representative of routinely-traveled portions of the road or parking lot surface. In order to simplify the sieve test procedures in section I.B.(ii) and section I.B.(iii) of this appendix, the three samples may be combined as long as all material is sifted to the finest sieve through which it can pass and the combined weight of the samples is calculated and recorded accurately.

II. * * *

1. Visible Crust Determination

(i) Thickness

* * * * *

(ii) Sufficiency

(A) Where a visible crust exists, drop a steel ball with a diameter of 15.9 millimeters (0.625 inches) and a mass of 16.33 grams from a distance of 30 centimeters (one foot) directly above (at a 90 degree angle perpendicular to) the soil surface. If blowsand is present, clear the blowsand from the surfaces on which the visible crust test method is conducted. Blowsand is defined as thin deposits of loose uncombined grains covering less than 50 percent of a vacant lot which have not originated from the representative vacant lot surface being tested. If material covers a visible crust which is not blowsand, apply the test method in section II.2 of this appendix to the loose material to determine whether the surface is stabilized.

(B) A sufficient crust is defined under the following conditions: once a ball has been dropped according to section II.1.(ii)(A) of this appendix, the ball does not sink into the surface so that it is partially or fully surrounded by loose grains and, upon removing the ball, the surface upon which it fell has not been pulverized so that loose grains are visible.

(C) Conduct three tests, dropping the ball once per test, within a survey area the size of one foot by one foot. The survey area shall be considered sufficiently crusted if at least two out of three tests meet the definition in section II.1.(ii)(B) of this appendix. Select at least two other survey areas that represent the disturbed surface area and repeat this procedure. Whether a sufficient crust covers the disturbed surface area shall be based on a determination that all of the survey areas tested are sufficiently crusted.

(D) At any given site, the existence of a sufficient crust covering one portion of a disturbed surface may not represent the existence or protectiveness of a crust on another disturbed surface(s). Repeat the visible crust test as often as necessary on

[1] CFR 60, App. A, Meth. 5, 2.1.2, footnote 2.

each representative disturbed surface area for an accurate assessment of all disturbed surfaces at a given site.

* * * * *

4. * * *

(ii) Count the number of standing vegetative structures within the survey area. Count vegetation which grows in clumps as a single unit. Where different types of vegetation exists and/or vegetation of different height and width exists, separate the vegetative structures with similar dimensions into groups. Count the number of vegetative structures in each group within the survey area. Select an individual structure within each group that represents the average height and width of the vegetation in the group. If the structure is dense (i.e. when looking at it vertically from base to top there is little or zero open air space within its perimeter), calculate and record its frontal silhouette area according to Equation 6 of this appendix. Also use Equation 6 if the survey area is larger than three square feet, estimating the average height and width of the vegetation. Otherwise, use the procedure in section II.4.(iii) of this appendix to calculate the Frontal Silhouette Area. Then calculate the percent cover of standing vegetation according to Equations 7, 8 and 9 of this appendix. (Ensure consistent units of measurement, e.g. square feet or square inches when calculating percent cover.)

(iii) Vegetative Density Factor. Cut a single, representative piece of vegetation (or consolidated vegetative structure) to within 1 cm of surface soil. Using a white paper grid or transparent grid over white paper, lay the vegetation flat on top of the grid (but do not apply pressure to flatten the structure). Grid boxes of one inch or one-half inch squares are sufficient for most vegetation when conducting this procedure. Using a marker or pencil, outline the shape of the vegetation along its outer perimeter according to Figure B, C or D of this appendix, as appropriate.

Note: Figure C differs from Figure D primarily in that the width of vegetation in Figure C is narrow at its base and gradually broadens to its tallest height. In Figure D, the width of the vegetation generally becomes narrower from its midpoint to its tallest height.) Remove the vegetation and count and record the total number of gridline intersections within the outlined area, but do not count gridline intersections that connect with the outlined shape. There must be at least 10 gridline intersections within the outlined area and preferably more than 20, otherwise, use smaller grid boxes. Draw small circles (no greater than a 3⁄32 inch diameter) at each gridline intersection counted within the outlined area. Replace the vegetation on the grid within its outlined shape. From a distance of approximately two feet directly above the grid, observe each circled gridline intersection. Count and record the number of circled gridline intersections that are not covered by any piece of the vegetation. To calculate percent vegetative density, use Equations 10 and 11 of this appendix. If percent vegetative density is equal to or greater than 30, use the equation below that matches the outline used to trace the vegetation (Figure B, C or D) to calculate its Frontal Silhouette Area. If percent vegetative density is less than 30, use Equations 12 and 13 of this appendix to calculate the Frontal Silhouette Area.

Height × Width = Frontal Silhouette Area *Eq. 6*

(Frontal Silhouette Area of Individual Vegetative Structure) × Number of Vegetation Per Group = Frontal Silhouette Area of Group *Eq. 7*

Frontal Silhouette Area of Group 1 + Frontal Silhouette Area of Group 2 (etc..) = Total Frontal Silhouette Area *Eq. 8*

(Total Frontal Silhouette Area/Survey Area) × 100 = Percent Cover of Standing Vegetation *Eq. 9*

[(Number of circled gridlines within the outlined area counted that are not covered by vegetation/Total number of gridline intersections within the outlined area) × 100] = Percent Open Space *Eq. 10*

100 − Percent Open Space = Percent Vegetative Density *Eq. 11*

Percent Vegetative Density/100 = Vegetative Density *Eq. 12*

$$[\text{Max. Height} * \text{Max. Width}] * \left[\frac{\text{Vegetative Density}}{0.4}\right]^{0.5} = \text{Frontal Silhouette} \qquad Eq.\ 13$$

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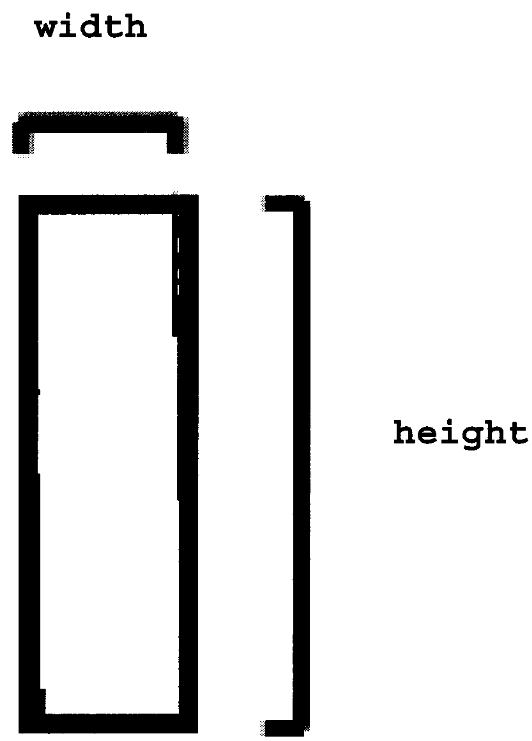
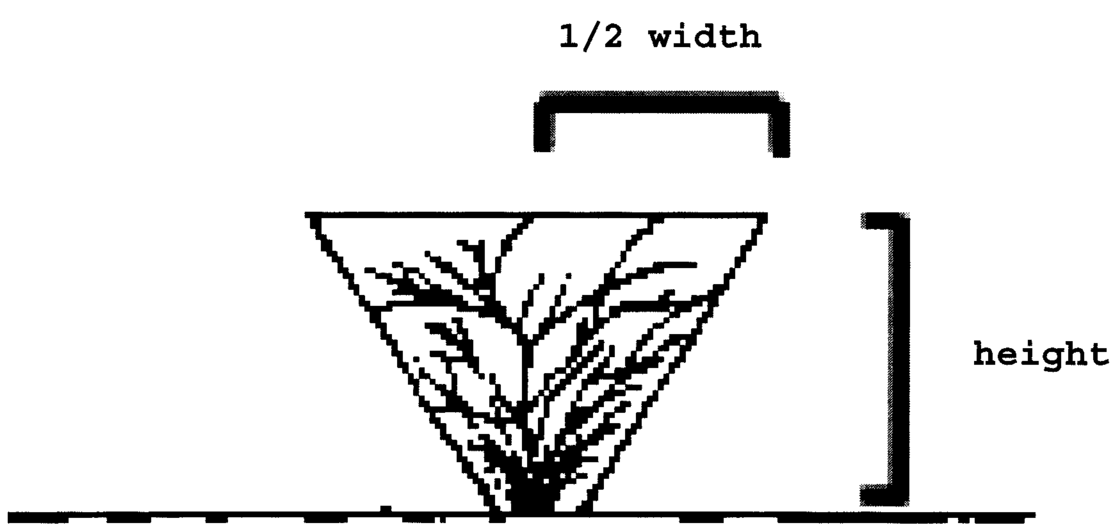
FIGURE B



Cylinder:

Frontal Silhouette Area = maximum (max.) height × max. width *Eq. 16*

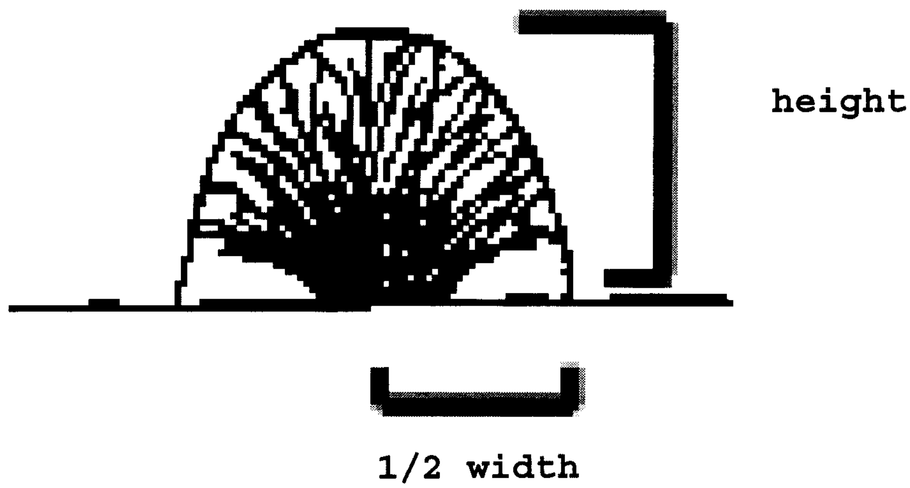
FIGURE C



Inverted Cone:

Frontal Silhouette Area = max. height × ½ max. width *Eq. 17*

FIGURE D



Upper Sphere:

Frontal Silhouette Area = (3.14 × max. height × ½ max. width)/2 *Eq. 18*

[FR Doc. 99–1124 Filed 1–20–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0117b; FRL–6213–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the rescission of rules for the Antelope Valley Air Pollution Control District (AVAPCD). These rules concern the rescission of rules for a market incentive program for the AVAPCD. The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these rescissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. 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. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by February 22, 1999.

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

Copies of the rule rescissions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule rescissions are also available for inspection at the following locations:

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

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns the rescission of Antelope Valley Air Pollution Control District, Regulation XX, Regional Clean Air Incentives Market (RECLAIM), submitted to EPA on June 23, 1998 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: December 10, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–1262 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[UT–001–0002b; FRL–6201–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake City Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the Salt Lake City carbon monoxide redesignation request, maintenance plan, and revised language in the Utah Administrative Code Rule (UACR) R307–1–3.3, ''Requirements for Nonattainment and Maintenance Areas—New and Modified Sources''. The redesignation request, maintenance plan, and changes to R307–1–3.3 were originally submitted by the Governor on November 25, 1995. Revisions to the maintenance plan were submitted by the Governor on December 9, 1996. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revisions as a direct final rule without prior proposal because the Agency views the request and revisions as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 22, 1999.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number (303) 312–6479.

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

Dated: November 23, 1998.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–1260 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6222–6]

RIN 2060–AG12

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of denial of petition.

SUMMARY: This action notifies the public that the Agency received a petition pursuant to section 612(d) of the Clean Air Act, under the Significant New Alternatives Policy (SNAP) Program, and that EPA is denying the petition. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for ozone-depleting substances (ODS) and to regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, EPA generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors that use ODS, including the refrigeration and air-conditioning sector.

OZ Technology, Inc. submitted Hydrocarbon Blend B, or HC–12a®, as a CFC–12 substitute in a variety of end-uses on July 19, 1994. In a June 13, 1995 final SNAP rulemaking (60 FR 31092), EPA found the use of Hydrocarbon Blend B unacceptable as a substitute for CFC–12 in all end-uses other than industrial process refrigeration. This determination was based on a lack of adequate data demonstrating that Hydrocarbon Blend B could be used safely in these end-uses. In addition, numerous other acceptable alternatives to ODS exist in these end-uses.

ADDRESSES: Information relevant to this Notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jeffrey Levy by telephone at (202) 564–9727, by fax at (202) 565–2096, by e-mail at levy.jeffrey@epa.gov, or by mail at U.S. EPA, Stratospheric Protection Division, 401 M Street, SW, Mail Code 6205J, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Since the publication of this unacceptability determination, OZ Technology has petitioned EPA three times. The following table provides information about each of the previous petitions and EPA's denials.

Item	Date	Docket location (within docket A–91–42)	FR notice
OZ Petition 1	November 4, 1994	VI–D–75	n/a.
EPA Denial of Petition 1	July 25, 1995	VI–C–7	60 FR 49407.
OZ Petition 2	December 5, 1995	VI–D–135	n/a.
EPA Denial of Petition 2	August 30, 1996	VI–C–20	61 FR 51018.

On May 1, 1998, OZ Technology, Inc. petitioned EPA for the third time. In this instance, OZ again requested that EPA remove Hydrocarbon Blend B from the unacceptable list and add it to the acceptable list as a substitute used in all new refrigeration and air-conditioning equipment. The petition is in Air Docket A–91–42, file number VI–D–229. On November 13, 1998, EPA denied the petition on the basis that the information included in the petition did not adequately address safety issues regarding the use of Hydrocarbon Blend B as a CFC–12 substitute in new equipment. The denial and the accompanying documentation are in Air Docket A–91–42, file number VI–C–28. This Notice publicizes EPA's denial of the third petition.

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Time) weekdays. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice may also be obtained on the world wide web at http://www.epa.gov/docs/ozone/title6/snap/.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 14, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–1336 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 231, and 232

[FRA Docket No. PB–9; Notice No. 15]

RIN 2130–AB16

Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Extension of comment period.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 9, 1998 (63 FR 48294), FRA proposed revisions to the regulations governing the power braking systems and equipment used in freight and other non-passenger railroad train operations. In that notice, FRA established a deadline for the submission of written comments of January 15, 1999. Due to the need to ensure that all interested parties have a sufficient amount of time to fully develop their comments and because several requests for additional time to submit written comments have been received by FRA, this document announces an extension of the deadline for the submission of written comments.

DATES: Written comments must be received by March 1, 1999. Comments received after that date will be considered to the extent possible without incurring additional expenses or delay.

ADDRESSES: Address written comments to the Docket Clerk, Office of Chief Counsel, RCC–10, Federal Railroad Administration, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590. Comments should identify the docket and notice number, and five copies should be submitted. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. The dockets are housed in the Seventh Floor of 1120 Vermont Avenue, N.W., Washington D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Leon Smith, Deputy Regional Administrator—Region 3, FRA Office of Safety, RRS–14, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20950 (telephone 404–562–3800), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–10, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20950 (telephone 202–493–6053).

SUPPLEMENTARY INFORMATION: FRA held two public hearings and one technical conference in October and November of 1998 in regard to this NPRM. During the hearings and technical conference, a vast amount of oral information was presented, and a considerable number of issues were raised and discussed in detail. Subsequent to these meetings, interested parties began the preparation of written comments, which were to be submitted to FRA no later than January 15, 1999. Recently, a few interested parties notified FRA of the need for additional time in which to prepare their written comments. Due to the complexity and importance of this rulemaking, especially to the railroads and rail labor, FRA does not wish to inhibit the ability of any party to fully develop its comments and seeks to provide sufficient time for all interested parties to gather necessary information. Therefore, as FRA is inclined to extend the period for the submission of written comments for certain interested parties, FRA is compelled to provide the same extension to all commenters. Consequently, FRA believes it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to March 1, 1999. It should be noted that FRA does not expect anyone to seek any further extension of the comment period in this proceeding and will consider comments submitted after March 1, 1999, only to the extent possible without causing additional expense or delay.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 99–1377 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 64, No. 13
Thursday, January 21, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Buena Biosystems, Inc., of Ventura, California, and Oregon Freeze Dry, Inc., of Albany, Oregon, co-exclusive licenses to U.S. Patent No. 5,834,177 issued on November 10, 1998, and the Continuation-In-Part to this Application, Serial No. 09/094,158 filed June 8, 1998, both entitled ''Artificial Media for Rearing Entomophages.'' Notice of Availability was published in the **Federal Register** on August 7, 1997, for U.S. Patent No. 5,834,177.

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

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Buena Biosystems, Inc., and Oregon Freeze Dry, Inc., have each submitted a complete and sufficient application for a license. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusives license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–1306 Filed 1–20–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of Asset Accumulation Initiatives

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Food and Nutrition Service to request Office of Management and Budget (OMB) approval of data collection for the study, Evaluation of Asset Accumulation Initiatives.

DATES: Comments on this notice must be received by March 22, 1999.

ADDRESSES: Send comments and requests for copies of this information collection to: Alberta Frost, Director, Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alberta Frost, (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of Asset Accumulation Initiatives.

OMB Number: Not yet assigned.

Expiration Date: Not applicable.

Type of Request: New collection of information.

Abstract: Special-purpose savings accounts are an increasingly common policy tool to encourage personal savings and asset accumulation by low-income individuals. Such savings accounts, established in the name of an individual or family and earmarked for expenditures to promote economic self-sufficiency, are excluded from consideration as countable assets for the purposes of determining eligibility for public benefits. One category of special-purpose accounts, known as Individual Development Accounts (IDAs), are established jointly between the participant and a sponsoring organization that matches the participant's deposits as an additional saving incentive.

A growing number of state and local special-purpose savings programs exist in the United States for low-income savers, with new programs developing rapidly. This growth has been spurred in large part by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA). Section 103(a)(1) of that legislation, 42 U.S.C. 604(g), allows states to establish IDA programs using Transitional Assistance to Needy Families (TANF) funds. Other national legislation has been introduced to support special-purpose savings accounts, including the Assets for Independence Act of 1998 (Pub. L. 105–285).

The Food and Nutrition Service (FNS) is conducting a study, Evaluation of Asset Accumulation Initiatives. The purpose of this project is to assess the degree to which state and local programs have been implemented to encourage low-income families (especially food stamp households) to save through special-purpose accounts.

Originally, this study was to involve a series of state demonstrations, as specified in the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), that were designed to promote the economic self-sufficiency of food stamp recipients through program changes to encourage asset accumulation. These demonstrations were not undertaken, however, as no state submitted an acceptable plan. Through the data collection described here, FNS will address the agency's congressional mandate to study asset accumulation policy.

Data collection will be conducted through the collection of program documents and a single round of telephone interviews in each of 20 states where special-purpose savings initiatives have been implemented. Interviews will be held with three types of respondents in each state: individuals knowledgeable of the specific provisions of the policy, individuals familiar with the administrative operations of the program, and persons who can provide empirical data, if available, about outcomes.

Estimate of Burden: The estimated public reporting burden associated with the telephone interviews is as follows: individuals knowledgeable with specific provisions of the policy (one hour), individuals familiar with the administrative operations of the program (two hours), and systems/evaluation staff (two hours). For each of the latter two categories, the indicated time may include interviews with multiple respondents.

Respondents: The respondents associated with the telephone interviews are listed above.

Estimated Number of Respondents: Telephone interviews will be conducted with a total of up to 100 respondents (up to five respondents from each of 20 states).

Estimated Number of Responses per Respondent: Telephone interviews will be conducted once with each respondent.

Estimated Total Burden on Respondents: The total burden on respondents will be up to 200 hours.

Dated: December 28, 1998.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–1345 Filed 1–20–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

AGENCY: Bureau of the Census.

Title: Census 2000—Puerto Rico.

Form Number(s): D–1(UL)(PR), D–1(UL)(PR)(S), D–1(E)(PR), D–1(E)(PR)(S), D–1(E)SUPP(PR), D–1(E)SUPP(PR)(S), D–1(HF)(PR), D–1 (HF)(PR)(S), D–2(UL)(PR),D–2(UL)(PR)(S), D–2(E)(PR), D–2(E)(PR)(S), D–2(E)SUPP(PR), D–2(E)SUPP(PR)(S), D–2(HF)(PR), D–2 (HF)(PR)(S), D–10(PR), D–10(PR)(S), D–15A(PR), D–15A(PR)(S), D–15B(PR), D–15B(PR)(S), D–20A(PR), D–20A(PR)(S), D–20B(PR), D–20B(PR)(S), D–21(PR), D–23(PR), D–806(PR), D–806(PR)(S), D–1(F)(PR), D–5(L)(UL)(PR), D–9(UL)(PR), D–16A(L)(UL)(PR), D–16B(L)(UL)(PR), D–19A(L)(PR), D–19A(L)(PR)(S), D–19B(L)(PR), D–19B(L) (PR)(S), D–19C(L)(PR), D–19C(L)(PR)(S), D–26(PR), D–31(PR), D–(UL)(PR), D–6(PR), D–6(UL)(PR), D–7(PR), D–7(UL)(PR), D–8(PR), D–8A(PR), D–8B(PR), D–12(PR), D–14(PR), D–40(PR), D–40(SCR)(PR).

Agency Approval Number: Not available.

Type of Request: New collection.

Burden: Short form—251,767 hours, Long form—190,400 hours, Reinterview—1,582 hours.

Number of Respondents: 1,400,000.

Avg Hours Per Response: Short form—13 minutes, Long form—48 minutes, Reinterview—6 minutes.

Needs and Uses: The United States Constitution mandates that a census of the Nation's population and housing be taken every 10 years. Title 13 of the United States Code specifies that in addition to the 50 states and the District of Columbia, the census should include Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. This OMB submission covers Puerto Rico only. The other areas mentioned will be submitted separately. The Census Bureau's goal in Census 2000 is to take the most accurate and cost-effective census possible. The importance of an accurate decennial census cannot be overstated. Puerto Rico census data are used to redraw legislative district boundaries to ensure that political representation is distributed accurately and to determine funding allocations for the distribution of Federal and Puerto Rico funds each year. Census data will tell us what we know about Puerto Rico; they are a definitive benchmark for virtually all demographic information used by the Federal, Puerto Rico and local governments, policy makers, educators, journalists, and community and nonprofit organizations.

Affected Public: Individuals and households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C, Sections 141, 193, 191.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1371 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: 1999 Survey of Program Dynamics.

Form Number(s): Automated Survey Instrument, SPD–19105(Letter), SPD–19113(Letter).

Agency Approval Number: 0607–0838.

Type of Request: Revision of a currently approved collection.

Burden: 25,150 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 36 minutes.

Needs and Uses: The Census Bureau seeks OMB approval to conduct the 1999 Survey of Program Dynamics (SPD). The SPD provides the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people. This survey simultaneously measures the important features of the full range of welfare programs, including programs that are being reformed and those that are unchanged, and the full range of other important social, economic, demographic, and family changes that will facilitate or limit the effectiveness of the reforms.

The SPD is a longitudinal study that follows a subset of the respondents from the 1992 and 1993 panels of the Survey of Income and Program Participation (SIPP). The SPD was first implemented in the Spring of 1997 with a bridge survey which provided a link to baseline data for the period prior to the implementation of welfare reforms. The first full-scale SPD was conducted in 1998. Annual surveys will be conducted through 2002. The data gathered for the 10-year period (1992–2002) will aid in assessing short- to medium-term consequences of outcomes of the welfare legislation.

The majority of questions used in the 1999 SPD will remain the same as those from 1998. New questions for 1999 have been requested by policymakers. These include questions on household expenditures, substance abuse, and extended measures of child well-being. A self-administered questionnaire for adolescents collected in 1998 will not be implemented in the 1999 SPD. Like the 1997 Bridge Survey and 1998 SPD, the 1999 SPD uses an automated questionnaire on laptops for personal visits and telephone interviews.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 USC, Section 614 (P.L. 104–193, Section 414).

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1372 Filed 1–20–99; 8:145 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: Boundary and Annexation Survey.

Form Number(s): BAS–1, 1A, 2, 2A, 3, 3A, 4, 5, 5A, 26 letters, 2 postcards, and 10 inserts.

Agency Approval Number: 0607–0151.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 118,041 hours.

Number of Respondents: 39,347.

Avg Hours Per Response: 3 hours.

Needs and Uses: The Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information on the creation of newly incorporated municipalities, minor civil divisions (MCDs), counties, Federally recognized American Indian areas (AIAs) which include reservations and/or off-reservation trust lands, and Alaska Native Regional Corporations (ANRCs), the dissolution of incorporated municipalities and MCDs, and changes to the boundaries of counties, incorporated municipalities, MCDs, AIAs, and ANRCs. The survey provides accurate identification of geographic areas for the decennial and economic censuses and support for the annual population estimates program. It is also used to update the municipal, MCD, county, AIA, and ANRC inventory for the Federal Information Processing Standards (FIPS) program managed by the U.S. Geological Survey (USGS) for the National Institute of Standards and Technology and to update the Geographic Names Information System (GNIS) maintained by the USGS.

During 1999 and 2000, in preparation of Census 2000, the Census Bureau needs information from all areas to confirm or update existing boundary information. Additionally, we need information about street addresses along boundary lines. This request for reinstatement includes an increase in burden hours to cover the more detailed information we will collect.

Affected Public: State, local, or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 6.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1375 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation (SIPP) Wave 11 of the 1996 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 22, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels each lasting four years. Respondents are interviewed once every four months in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to IRA, Keogh, 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 1996 Panel Wave 11 collect information about:

- Child Support Agreements.
- Support for Nonhouseholders.
- Adult Disability.
- Child Disability.

Wave 11 interviews will be conducted from August through November 1999.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every four years with each panel having a duration of four years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607–0813.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 77,700.
Estimated Time Per Response: 30 minutes per person.
Estimated Total Annual Burden Hours: 117,800.
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1370 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Fresh Kiwifruit From New Zealand: Postponement of Preliminary Results of Antidumping Duty Administrative Review (A–614–801)

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

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

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the antidumping duty administrative review of the antidumping finding on fresh kiwifruit from New Zealand covering the period June 1, 1997, through May 31, 1998, since it is not practicable to complete the review within the time limit mandated by Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Stoltz or Jim Terpstra, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4474 and 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

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

Background

On July 28, 1998 (63 FR 40258) the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on fresh kiwifruit from New Zealand covering the period June 1, 1997, through May 31, 1998. In our notice of initiation, we stated that we intended to issue the final results of this review no later than June 30, 1999. The current deadline for the preliminary results is March 2, 1999.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame because of the numerous novel and complex legal and methodological issues in this review (*see* Decision Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, to Robert S. LaRussa, Assistant Secretary).

Accordingly, the deadline for issuing the preliminary results of this review is now due no later than June 30, 1999.

The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

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

Dated: January 14, 1999.

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–1369 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Mercantile Exchange for Designation as a Contract Market in Cash Settled Butter Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in cash settled butter futures and options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

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

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME cash settled butter futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Martin Murray of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: mmurray@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's Headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 14, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–1376 Filed 1–20–99; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public, project sponsors, and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Corporation is soliciting comments concerning its request for renewal of the National Senior Service Corps' Project Profile and Volunteer Activity (PPVA) Survey data collection instruments with the proposed revisions listed below.

Copies of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice. This document will be made available in alternate format upon request—TDD (202) 606–5000 ext. 164.

The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 22, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps (NSSC), Attn: Janice Forney Fisher, 1201 New York Avenue, N.W., 9th floor, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Janice Forney Fisher by calling (202) 606–5000 ext. 275 or by e-mailing Jfisher@cns.gov.

SUPPLEMENTARY INFORMATION:

Background

PPVA instruments are used to collect project and aggregate volunteer demographic and activity data from project sponsors funded under the Retired and Senior Volunteer Program

(RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP). Data collection instruments have been in use for this purpose at least 2 decades in each of the programs. OMB approves data collection instruments for a maximum of 3 years at a time. Current 3-year approval ends in June 1999.

Current Action

The Corporation has initiated review and 3-year OMB approval on the PPVA instruments through 2002. As proposed revisions are minor, no change will result in the per-response burden of the data collection. However, the proposed reduction in frequency of reporting from annually to every two years will halve the average annual hour burden on individual respondents.

Proposed changes to all three existing instruments include the following:

• Reduce the frequency of submission from annually to every two years starting in 1999.

• Sponsor Type—Allow sponsors to check multiple types if applicable. Add ''Indian Tribes'' and ''Volunteer Management Organization'' to options.

• Add question on availability of access to the Internet.

• Question 1—Budgeted Volunteers/VSYs—Delete.

Modifications to the RSVP instrument include the following:

• Stations—Add ''Museums'' and ''Other Public Agencies Not Elsewhere'' to the list of options. Split Schools into ''Schools-Elementary'' and ''Schools-Secondary''.

• Shorten service hour category names consistent with OMB-approved Accomplishment Survey.

• Category 201—Move Senior Center group programs not providing adult day care services to new category 213.

• Category 305—Move programs for dropouts to category 334 with GED programs.

• Category 312—Incorporate child literacy programs from category 336.

• Category 336—Delete; contents will be split between categories 312 and 338 by age.

• Category 338—Incorporate adult literacy activities from category 336.

Modifications to the FGP and SCP instruments include the following:

• Question 3—Revise age groupings for better consistency with RSVP and Census groupings. New groups are 60–64, 65–74, 75–84, 85+.

• Add a question on how many potential volunteers were ineligible due to over-income status.

• SCP Stations—Delete ''Nutrition Sites'' and add ''Public Health Agencies''.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Project Profile and Volunteer Activity Survey.

OMB Number: 3045–0029

Agency Number: 1021–FGP, 1021–RSVP, 1021–SCP.

Affected Public: Organizations that receive grants under the Retired and Senior Volunteer Program, Foster Grandparent Program, and Senior Companion Program.

Total Respondents: 1,300.

Frequency: Every two years.

Average Time Per Response: 8.1 hours RSVP; 5.1 hours FGP; and 3.7 hours SCP.

Estimated Total Burden Hours: 4,338 hours annualized.

Total Burden Cost (capital/startup): $11,100.

Total Burden Cost (operating/maintenance): $650.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 14, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–1331 Filed 1–20–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Inspection and Request for Public Comment—Accreditation Visit

The United States Air Force Academy is seeking public comments about the Academy in preparation for its periodic evaluation by its accrediting agency. The Academy will undergo a comprehensive evaluation visit May 3–7, 1999 by a team representing the commission on Institutions of Higher Education of the North Central Association of Colleges and Schools. The visit is a 10-year reassessment of the Academy's success in meeting the Commission's Criteria for Accreditation and General Institutional Requirements as a degree-granting institution of higher education. The Academy has been fully accredited by the Commission since 1959.

The public is invited to submit comments regarding the Academy to: Public Comment on the USAF Academy, Commission on Institutions of Higher Education, North Central Association of Colleges and Schools, 30 North LaSalle Street, Suite 2400, Chicago, IL 60602.

Comments must address substantive matters related to the quality of the institution or its academic programs. Comments must be in writing and signed. Comments cannot be treated as confidential. All comments must be received by April 1, 1999.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–1282 Filed 1–20–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for the Final Environmental Impact Statement (FEIS) for the Proposed Upgrade of Training Areas and Facilities, Camp Atterbury, Indiana, by the Indiana Army National Guard (INARNG)

AGENCY: National Guard Bureau, Department of the Army, DoD.

ACTION: Record of decision.

SUMMARY: The Record of Decision (ROD) was signed on October 14, 1998. The decision made in the ROD was to implement the proposed action and a series of mitigation measures to minimize the environmental impacts of this action. The proposed action is to construct and operate at Multi-Purpose Training Range (MPTR) that would support tanks, attack helicopters, Infantry Fighting Vehicles, and a dismounted infantry platoon battle course. Equipment would also be upgraded commensurate with troop training doctrine.

The purpose of the project is to maximize training opportunities for military units that use Camp Atterbury. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state mission in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned mission.

ADDRESSES: A copy of the FEIS can be obtained by writing to Major Rick Jones, EIS Project Officer, Indiana Army National Guard, 2002 S. Holt Road, Indianapolis, Indiana 46241–4839.

FOR FURTHER INFORMATION CONTACT: Major Rick Jones at (317) 247–3105, facsimile extension 3414.

SUPPLEMENTARY INFORMATION: The INARNG proposes to upgrade training areas and facilities at Camp Atterbury, Indiana. The proposed action includes the construction of an MPTR. The proposed action does not include development of maneuver corridors. These corridors, if proposed for addition in the future, will be the subject of a supplemental National Environmental Policy Act document. The MPTR will be located in the southwest sector of the installation and will be used for training by armor, attack helicopter, Infantry Fighting Vehicles, and dismounted infantry units. The MPTR would include a support area, firing area and a target area. The firing area would include stationary, moving and defilade firing positions. The target area would contain stationary and moving targets. Firing points would be oriented to provide northeasterly trajectories into the existing impact area. The MPTR itself would occupy approximately 80 hectares (200 acres) and, including the safety fan, the area involved would total 4,550 hectares (11,250 acres).

Three alternatives in addition to the proposed action were considered—the first (Alternative 2A) includes the construction of the MPTR and two maneuver corridors, another alternative with less development (Alternative 2B), and the no action alternative. Alternative 2B involves the MPTR being located in the northwest sector of Camp Atterbury, with firing points oriented to provide southeasterly trajectories into the impact area, and would involve the development of only the eastern maneuver corridor. The no action alternative considers the continued use of Camp Atterbury without the proposed upgrade.

Two public meetings were conducted near Camp Atterbury, Indiana, on the DEIS after the Notice of Availability was published. After all the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DEIS to constitute the FEIS.

The ROD was published after the 30-day waiting period on the FEIS that was completed on October 13, 1998.

Copies of the ROD will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

Dated: January 14, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 99–1343 Filed 1–20–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)

Date of Meeting: 19 & 20 January 1999

Time of Meeting: 0830–1600

Place: 2425 Wilson Blvd., Arlington, VA 22201

Agenda: The Army Science Board's (ASB) Summer Study Panel on ''Enabling Rapid and Decisive Strategic Maneuver for the Army After 2010'' will meet for discussions. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Jacqueline Ladd at (703) 604–7479.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 99–1283 Filed 1–20–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Shock Testing the Seawolf Submarine

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations implementing NEPA issued by the Council on Environmental Quality (CEQ), 40 Code of Federal Regulations (CFR) Parts 1500–1508; Navy regulations implementing NEPA procedures (31 CFR 775); and Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions''; hereby announces its selection of the area of the Atlantic Ocean offshore of Mayport Naval Station, Jacksonville, Florida for the SEAWOLF submarine shock test. NEPA sets out the procedures Federal agencies must follow in analyzing environmental impacts of major Federal actions within U.S. territory. Executive Order 12114 sets out the procedures Federal agencies must follow in analyzing environmental impacts of major Federal actions occurring outside U.S. territory in the global commons or within the territory of another nation. The Department of the Navy was the lead agency and the National Marine Fisheries Service (NMFS) was a cooperating agency for the Environmental Impact Statement (EIS).

The SEAWOLF submarine would be shock tested in a manner consistent with the alternative ''Shock Testing The SEAWOLF At An Offshore Location'', described in the Final Environmental Impact Statement (FEIS) as the proposed action. The FEIS analyzed in detail two alternative areas offshore of Mayport, Florida and Norfolk, Virginia. The submarine would be subjected to a series of five 10,000 pound explosive charge detonations sometime between April 1, 2000 and September 30, 2000. Testing offshore of Mayport would be conducted between May 1 and September 30, 2000 to minimize the risk to sea turtles which may be more abundant in the Mayport area during April. The series of five detonations would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the submarine's systems prior to the next detonation.

The two areas were evaluated with respect to operational criteria and environmental impacts. Both were determined to meet all of the Navy's operational requirements. In choosing the Mayport area, Navy determined that while most environmental impacts of shock testing would be similar at both locations, the risk of mortality and injury to marine mammals is about five to seven times lower at Mayport.

The Navy has determined that shock testing in the Mayport area will have the least environmental impact. This Record of Decision leaves the selection of a single primary and two secondary test sites within the Mayport test area to be made based on aerial surveys of marine mammals and turtles done three weeks prior to the shock test. One of these three sites will be selected as the final test site based on marine mammal and turtle surveys performed two to three days before each detonation.

Background

The USS SEAWOLF is the first of a new class of submarines being acquired by the Navy. The class consists of three submarines, with the second and third currently under construction. SEAWOLF class submarines are the largest and most capable fast attack submarines in the fleet. Features include reduced acoustic and electromagnetic signatures, improved speed, greater maximum operating depth, greater ordnance capacity, and other technological improvements reflecting the state-of-the-art in submarine design.

Section 2366, Title 10, United States Code (10 U.S.C. 2366), provides that a covered system, such as a submarine, cannot proceed beyond initial production until realistic survivability testing for the system is complete. Realistic survivability testing means testing of the vulnerability of the system in combat by firing munitions likely to be encountered in combat with the system configured for combat. This testing is commonly referred to as ''Live Fire Test & Evaluation'' (LFT&E). Consistent with 10 U.S.C. 2366, the Navy has established a LFT&E program to complete the survivability testing of SEAWOLF Class submarines. The SEAWOLF LFT&E program includes a ship shock test. A ship shock test is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat.

The purpose of the project is to shock test the SEAWOLF so that the resultant data can be used to assess the survivability of the submarine. Computer modeling and component testing on machines or in surrogates does not provide adequate information to fully assess the survivability of the submarine. Testing the manned submarine with the appropriate systems operating provides the best information to support an assessment of the survivability of the ship. Shock tests have proven their value as recently as the Persian Gulf War when ships were able to survive battle damage and continue their mission because of ship design, crew training, and survivability lessons learned during previous shock tests.

The SEAWOLF was christened in June 1995 and delivered to the Navy in the summer of 1997. Because of the long series of at-sea testing that must be completed by the lead ship of a class, shock testing did not occur in 1997 as originally planned. Therefore, the Navy rescheduled the shock test for the spring/summer of 2000.

The delay of the SEAWOLF shock test from 1997 to 2000 is addressed in the environmental analysis provided in the FEIS. The impacts identified and the mitigation developed were based on the time of year that the test is conducted, and no impacts were identified that were variable other than seasonally each year. Therefore, the methodology for determining impacts remained valid and the Navy decided to issue the FEIS even though the planned year of the test had changed. During 1997, the Navy conducted additional aerial surveys of the Mayport area to further confirm and validate the marine mammal and sea turtle population density data obtained during the 1995 aerial surveys. These additional data were incorporated into the FEIS.

To begin the NEPA process, Navy published a Notice of Intent in March 1995 in the **Federal Register** (60 FR 12748) and five newspapers (Washington Post, Virginian Pilot, Florida Times Union, Beaches Leader, and Southeast Georgian), announcing that Navy would prepare an EIS. A 30-day public scoping period was established for identifying issues to be addressed in the Draft Environmental Impact Statement (DEIS). Navy held scoping meetings jointly with NMFS on March 23, 1995 in Silver Spring, Maryland; on March 28, 1995 in Norfolk, Virginia; and on March 29, 1995 in Atlantic Beach, Florida. Written and oral comments were received during the public meetings. All comments were reviewed to ensure that all issues were addressed in the DEIS.

The notice of availability for the DEIS was published in the **Federal Register** (61 FR 30232) on June 14, 1996. Navy distributed the DEIS to Federal, State, and local agencies, elected officials, special interest groups, and interested persons. Navy held public hearings jointly with NMFS to receive written and oral comments on the DEIS on August 19, 1996 in Silver Spring, Maryland; August 20, 1996 in Norfolk, Virginia; and August 21, 1996 in Atlantic Beach, Florida. The public comment period on the DEIS ended on September 17, 1996. Federal, State, and local agencies, and the general public commented on the DEIS. These comments and Navy's responses were incorporated in the FEIS, which was distributed to the public on June 5, 1998, for a review period that concluded on July 6, 1998.

Coordination and Consultation With the NMFS

The NMFS has two regulatory roles in the SEAWOLF project. First, the NMFS is responsible for administering the Endangered Species Act as it applies to sea turtles and most marine mammals. The DEIS served as the Biological Assessment which the Navy submitted to the NMFS, requesting formal consultation under Section 7 of the Endangered Species Act (ESA), (16 U.S.C. 1531 *et seq.*). The NMFS subsequently issued a Biological Opinion, dated December 12, 1996, which completed the consultation process under ESA.

The NMFS also has a regulatory role under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*). When the DEIS was published, the Navy submitted a separate application to the NMFS for an ''incidental take authorization'' under section 101(a) (5) (A) of the MMPA. The NMFS published a Proposed Rule in the **Federal Register** on August 2, 1996 (61 FR 40377) and participated in joint public hearings with the Navy (see dates above) to receive comments. The Proposed Rule specified mitigation, monitoring, and reporting requirements for the shock test. A Final Rule must be issued by NMFS before shock testing can proceed.

The NMFS was also a cooperating agency with the Navy in preparing the EIS. Because of its regulatory responsibilities under the ESA and the MMPA, the NMFS limited its role in preparation of the EIS to providing review and comment.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for implementing a proposed Federal Action. The alternatives evaluated in the FEIS were no-action and shock testing the SEAWOLF at an offshore location. Alternative offshore areas for shock testing were compared from operational and environmental perspectives. A preferred alternative was identified based on these comparisons.

Under the ''No Action'' alternative, no new activities affecting the physical environment would be conducted to predict the response of SEAWOLF class submarines to underwater detonations. This alternative would avoid all environmental impacts of shock testing. Navy has established an LFT&E program to demonstrate the survivability of SEAWOLF class submarines. The program consists of three major areas that together provide the data necessary to assess the SEAWOLF's survivability: computer modeling and analysis, component and surrogate testing, and a shock test of the entire ship. The SEAWOLF LFT&E program already includes the maximum reasonable amount of computer modeling and component testing. Testing the manned submarine with the appropriate systems operating provides the best information to support an assessment of the survivability of the ship. The ''No Action'' alternative would prevent the Navy from being able to make the best survivability assessment.

The remaining alternative discussed in the FEIS was the proposed action, to shock test the SEAWOLF at an offshore location. The submarine would be subjected to a series of five 10,000-pound explosive charge detonations. The series of five detonations would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the submarine's systems prior to the next detonation. The series of detonations would occur sometime between April 1, and September 30, based on the Navy's operational requirements.

A location on the east coast best meets operational needs as that is where the SEAWOLF will be homeported and where all sea trials will occur. Scheduling the test on the West Coast or in the Gulf of Mexico would increase the time the ship is away from the homeport, complicate or prolong repairs, and further delay deployment. Under Navy Personnel Tempo (PERSTEMPO) regulations, a ship is required to spend a day in homeport for every day it is away from homeport for purposes of crew quality of life and efficiency (OPNAVINST 3000.13A, 21 December 1990). A shock test conducted away from the homeport is typically a 3.5 to 4 month deployment, including time spent having special equipment installed at the shore support facility, completing test runs and training, and conducting the actual shock testing. Scheduling the test away from the East Coast would maximize time spent away from the homeport and minimize the SEAWOLF's availability for deployment as part of fleet resources.

The Navy screened possible East Coast shock testing areas according to operational criteria. Potential areas were first defined as locations having a water depth of 152 m (500 ft) that are within 185 km (100 nmi) of a naval station support facility and a submarine repair facility. This water depth is sufficient to minimize the effect of a bottom reflected pressure wave on the submarine and shallow enough to allow mooring of the operational vessel with the test array. This depth would also permit recovery of the crew and submarine in the unlikely event of a control failure. Other criteria include proximity to an ordnance storage/loading facility and Navy assets (ships and aircraft) necessary to support test needs. There must also be little or no shipping traffic in the area. Finally, calm seas and good visibility are needed for the test.

Five east coast areas were identified that could potentially meet the Navy's operational requirements: Mayport, Florida; Norfolk, Virginia; Groton, Connecticut; Charleston, South Carolina; and Key West, Florida. Charleston was eliminated because of the closure of the Charleston Naval Base under the Base Closure and Realignment (BRAC) process (i.e., facilities and vessels to support the test would not be available). The water depth of 275 m (900 ft) at the Key West area is too great for the planned shock testing. In addition, the Key West area lacks the industrial base to support submarine repairs or drydocking, and there is no surface vessel homeport nearby that could provide Navy assets (ships and planes) to support the test. Key West was, therefore, eliminated from further consideration.

The FEIS further analyzed Mayport, Norfolk, and Groton according to the operational criteria. The areas were scored against the operational criterion, with Mayport and Norfolk having nearly identical scores, whereas Groton scored substantially lower. Groton scored poorly on criteria for incidence of fog, visibility, and proximity to Navy assets. Mayport, Florida and Norfolk, Virginia were the areas determined to meet all of the Navy's operational criteria and therefore were the focus of detailed environmental analysis in the FEIS.

The FEIS evaluated the Mayport and Norfolk areas with respect to environmental considerations. Possible test sites were first defined as any point along the 152 m (500 ft depth contour within 185 km (100 nmi) of a naval station support facility and a submarine repair facility. Environmental features near each area were mapped, including marine sancturaries, artificial reefs, hard-bottom areas, shipwrecks, ocean disposal sites, and critical habitat for endangered or threatened species. Buffer zones were then developed to avoid impacts to these areas and associated biota, excluding portions of the 152 m depth contour. Features such as several shipwrecks, potential hard bottom, and the proposed Norfolk Canyon Marine Sanctuary were excluded from the area of consideration at Norfolk. All points along the 152 m depth contour off Mayport were considered potential shock testing sites.

To supplement historical information and better understand the potential impacts the SEAWOLF shock test might have on marine mammals and turtles, Navy conducted monthly aerial surveys during the six-month period from April through September 1995. These surveys, for both Mayport and Norfolk, were done to assist in determining density and distribution of marine mammals and turtles. Significantly higher numbers of marine mammals were sited off Norfolk. A total of 4,438 individuals representing at least 14 species of marine mammals were seen at the Norfolk area during the 1995 aerial surveys while a total of 1,303 individuals representing at least seven species were seen at Mayport. The total number of sea turtles seen in the two areas was 48 at Norfolk and 138 at Mayport. During the month of April, 61 turtles were seen at Mayport while 0 were seen at Norfolk, accounting for a large portion of the difference between the two areas. Additional aerial surveys were conducted at Mayport during the five-month period May through September 1997. During the 1997 surveys 1,485 individuals representing at least eight species of marine mammals and 240 sea turtles were seen.

Most environmental impacts of shock testing were determined to be similar at Mayport or Norfolk. However, the two areas differ significantly with respect to potential impacts on marine mammals and sea turtles. The most significant environmental difference between the areas is the much lower risk of impacts to marine mammals at the Mayport area. Using the 1995 survey data from both areas as the most appropriate basis for comparison, the risk of mortality and injury of marine mammals is about 5 to 7 times lower at Mayport than at Norfolk, whereas the risk to sea turtles is about the same at the two areas. This comparison strongly favors Mayport as the preferred alternative. If the 1997 Mayport survey data are compared with the Norfolk 1995 data, the risk of marine mammal mortality and injury would be 3.5 to 5 times lower at Mayport, but the risk to sea turtles would be 2 times lower at Norfolk. This comparison also indicates that Mayport has the lowest overall risk of significant environmental impacts. Considering all components of the physical, biological, and socioeconomic environment, potential impacts would be less at the Mayport area.

Based on the evaluation of criteria, the preferred alternative is to shock test the SEAWOLF submarine offshore of Mayport, Florida. Testing will not occur during the month of April when turtle densities may be higher. This alternative meets the project purpose and need, satisfies operational criteria, and minimizes environmental impacts. The Norfolk area also meets the project purpose and need and satisfies operational criteria; however the density of marine mammals in the area could increase the risk of impacts.

Environmental Impacts

In the FEIS Navy analyzed the potential impacts of shock testing the SEAWOLF at the Mayport, Florida offshore area. Impact discussion was separated into separate subsections to distinguish between those aspects of the proposed action evaluated under NEPA and those evaluated under Executive Order (EO) 12114. NEPA applies to activities and impacts within U.S. territory, whereas EO 12114 applies to impacts outside territorial seas. The proposed action includes operations that will occur both within and outside U.S. territory. Shock testing and associated mitigation will occur at least 87 km (47 nmi) offshore at the Mayport area, well outside U.S. territorial seas.

No impacts from the actual test (detonation of explosives) will occur in U.S. territory. The only operations that will occur within territorial limits are shore support activities and vessel and aircraft movements in territorial waters (i.e., transits between the shore base and the offshore shock-testing site). These shore support activities and vessel and aircraft movements are not unusual or extraordinary and are part of the routine operations associated with the existing shore bases. This Record of Decision focuses on the impacts that will likely result from implementing the proposed action, detonation of explosives outside of U.S. territorial seas.

Shore support operations and movement of vessels and aircraft within territorial limits are not unusual or extraordinary and are part of the routine operations associated with the existing shore bases. Under NEPA, impacts of these existing operations on the physical environment, specifically geology and sediments, air quality, and water quality are minimal. Impacts of these existing operations on the biological environment, marine biota, including plankton, pelagic fish, marine mammals, sea turtles, benthic organisms, and seabirds are minimal. Impacts of these existing operations on the socioeconomic environment, commercial and recreational fisheries and ship traffic, are also minimal.

The impacts of detonation of the explosive charge on the physical environment are evaluated under EO 12114. Calculations based on the size of the explosive (4,536 kg or 10,000 lb), the depth of burst (30 m or 100 ft), and the total water depth (152 m or 500 ft) indicate there will be no cratering of the seafloor. The shock wave will reach the seafloor and be reflected from it, but will have no significant impact on bottom structure or form.

The test area is well offshore in an area not classified for priority pollutants under the Clean Air Act. It is estimated that 90% of the gaseous explosion products will become airborne. These products include carbon dioxide, carbon monoxide, ammonia, ethane, propane, hydrogen cyanide, methane, methyl alcohol, formaldehyde, acetylene, and phosphine. Because of the low initial concentrations and rapid dispersion of the explosion products, there will not be any risk to human health or marine life at the test site. 100% of the solid explosion products and 10% of the gases will remain in the water. All products have predicted concentration levels well below permissible concentrations, indicating no hazard to marine life.

The impacts of detonation of the explosive charge on the biological environment are also evaluated under EO 12114. The impacts are evaluated for several categories of marine life. Plankton would be affected mainly by the physical force of the shock wave from the detonations. No lasting impacts on plankton communities due to cavitation or chemical products are expected. The detonations could have two main effects on pelagic fish. First, fish within a certain radius will be killed or injured by the resulting shock waves. The predicted 10% mortality range for fish (i.e., a distance beyond which at least 90% of fish would survive) ranges from 22 m (73 ft) for non-swimbladder fish to over 914 m (3,000 ft) for some of the small swim-bladder fish. A large fish kill is not expected because detonation would be postponed if large schools are observed within 1.85 km (1 nmi) of the detonation point. Secondly, fish at greater distances may react behaviorally to sound impulses from the blast. It is expected that any behavioral responses to low-frequency sounds from the underwater explosions would be short term and reversible.

The detonation of the explosive charge on marine mammals may have two types of potential impacts. First, marine mammals, if they are present and are not detected during pre-test monitoring within about 1.85 km (1 nmi) of the detonation point, may be killed or injured. Second, marine mammals at greater distances [up to 15.7 km (8.5 nmi) for odontocetes and 23.5 km (12.7 nmi) for mysticetes] may experience auditory effects such as temporary threshold shift (TTS). At still greater distances, some marine mammals may hear the detonations and exhibit a momentary, minor behavioral response. Criteria for marine mammal lethality, injury, and harassment were developed through extensive literature review and modeling and were fully discussed in the FEIS.

Because the proposed action may result in mortality, injury, or harassment of marine mammals, the Navy submitted a request for ''incidental take'' authorization from the NMFS concurrently with the release of the DEIS. The MMPA allows the incidental (but not intentional) taking of marine mammals upon request if the taking will (1) have a negligible impact on the species or stock(s); and (2) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In response to the Navy's incidental take request, the NMFS published a Proposed Rule in the **Federal Register** on August 2, 1996 (61 FR 40377). A Final Rule must be issued before shock testing can proceed. In addition, because listed (endangered and threatened) species of marine mammals and sea turtles may occur at the Mayport area, formal consultation with the NMFS was required under the ESA. The DEIS served as the Biological Opinion submitted to the NMFS. The NMFS issued a Biological Opinion taking into account the cumulative impacts of all activities potentially affecting listed marine mammal and turtle populations which concluded that, with mitigation included in the proposed action, shock testing is not likely to jeopardize the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitat.

To provide numbers for the incidental take request submitted to the NMFS, it was necessary for Navy to estimate numbers of potentially affected animals. The analysis performed by the Navy deliberately overestimated numbers of affected animals in order to provide an upper bound on potential impacts. The number of marine mammals potentially killed, injured, or harassed as a result of the proposed detonations was estimated using a series of steps and assumptions described in the FEIS. Maximum ranges for mortality, injury, and harassment were defined using criteria developed in the FEIS. The mortality and injury criteria were based on tests conducted with terrestrial mammals, the harassment criterion was based on temporary threshold shift (TTS) in bottlenose dolphins. Mean densities of each species were multiplied by the area of the mortality, injury, and harassment ranges to estimate the number of mammals and turtles affected ''without mitigation''. The mitigation effectiveness was then estimated for each species, taking into account the probability of detection by aerial and surface observers and passive acoustic monitoring. For mortality and injury, the ''without mitigation'' numbers for each species were then multiplied by (1 minus mitigation effectiveness), which is the probability of not detecting that species during pre-detonation monitoring. The resulting values are the expected number of undetected animals of each species within the mortality and injury range. For harassment, the ''with mitigation'' numbers were assumed to be equal to the ''without mitigation'' numbers, because only a small proportion of the harassment radius is within the Safety Range.

The criterion by which the mortality range was defined in the FEIS was onset of extensive lung hemorrhage. The range varies depending on mammal weight, with the smallest mammals having the greatest range. The maximum predicted range for a small marine mammal (a calf dolphin) was 1.1 km (0.6 nmi). The FEIS analysis assumed that 100% of the marine mammals within this radius would be killed, even though the probability of mortality from the onset of extensive lung hemorrhage was estimated to be only 1% at the outer edge of this range.

The measure of non-lethal injury used in the FEIS to define the injury range was 50% probability of eardrum rupture. The greatest range, calculated for a mammal at the bottom, was 1.85 km (1 nmi). The FEIS assumed that 100% of marine mammals within this radius would be injured even though the probability of eardrum rupture at the outer edge of this range is only 50% (and less in near-surface waters).

The 1994 amendments to the MMPA defined harassment, but do not define threshold sound levels sufficient to cause it. The NMFS has not formally defined a threshold for harassment, but has cited temporary threshold shift (TTS) as an example (FR 60[104]:28379–28386, 31 May 1995). TTS is a change in the threshold of hearing (the quietest sound that an animal can hear), which could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. In the FEIS, TTS was used as the criterion for acoustic harassment of marine mammals. Based on the results of TTS experiments in bottlenose dolphins, an energy density TTS criterion of 182 dB re $1\mu Pa^2$.sec was used. Separate ranges were calculated for odontocetes and mysticetes based on their differing sensitivity to low frequencies. For odontocetes, which are ''high frequency specialists,'' all frequencies greater than or equal to 10 Hz were included. The harassment range is predicted to be 15.7 km (8.5 nmi) for odontocetes and 23.5 km (12.7 nmi) for mysticetes.

Detailed calculations of range distances, estimates of marine mammal densities, and mitigation effectiveness can be found in the FEIS. While the Navy does not anticipate any lethal or injurious takes will result from the five-detonation shock test, the theoretical calculations based on the previously described criteria indicate the potential for 1 lethal take, 5 injurious takes, and 1,788 harassment takes of marine mammals. These numbers have several levels of conservatism built into them. Calculations were done using data from both the 1995 and 1997 surveys with the largest resulting numbers being chosen. The numbers were then compared to the results from the DEIS method of calculation, with the largest numbers again being selected.

There is comparatively little experimental or theoretical data upon which to base mortality and injury ranges for sea turtles. Therefore, the FEIS used the corresponding ranges for marine mammals. While these ranges were based on experiments with mammals, it is reasonable to assume sea turtle lungs and other gas-containing organs would be similarly affected by shock waves. Calculations indicate the maximum potential for 8 mortalities, 30 injuries, and 1,679 harassments. Calculations in the FEIS were done using data from both the 1995 and 1997 surveys with the largest resulting numbers (1997) being chosen. The numbers were then compared to the results from the DEIS method of calculation, with the largest numbers again being selected. Loggerheads and leatherbacks, listed as threatened and endangered respectively, are the two species that may potentially be killed or injured. Loggerheads make up most of the population and are the species most likely to be killed or injured. The three other sea turtle species (green, hawksbill, and Kemp's ridley) are also endangered or threatened, but are primarily inshore species which were not seen during the 1995 or 1997 aerial surveys. Therefore, no mortalities or injuries of these species are expected.

Navy also analyzed the impacts on minority and low-income populations pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. 4321. The proposed action would not have any adverse impacts on the human population and would not have a disproportionately high effect on any minority or low-income group.

Mitigation

Mitigation, as defined by the Council on Environmental Quality, includes measures to minimize impacts by limiting the degree or magnitude of a proposed action and its implementation. The shock test at Mayport includes the following mitigation measures: (1) A schedule shift to avoid high densities of sea turtles; (2) a vessel exclusion zone for operational security; (3) measures to deal with unexploded ordnance in the unlikely event of a misfire, and (4) a marine mammal and sea turtle mitigation plan to minimize the risk of impacts to these animals.

The schedule shift will allow testing at Mayport only between May 1 and September 30. No testing will occur in April when turtle densities are highest. This mitigation measure is based on the results of aerial surveys conducted between April and September 1995. Based on the 1995 data and the likely concentration of loggerhead turtles in offshore waters prior to nesting season, exclusion of April from the test schedule is considered a reasonable precaution.

An exclusion zone of 9.3 km (5 nmi) radius will be established around the detonation point to exclude all non-test ship, submarine, and aircraft traffic. Any traffic within an 18.5 km (10 nmi) radius will be warned to alter course or will be escorted from the site. Notices to Airmen and Mariners will be published in advance of each test. An immediate HOLD on the test will be ordered if any unauthorized craft enters the exclusion zone and cannot be contacted. The HOLD will continue until the exclusion zone was clear of unauthorized vessels. The size of the exclusion zone is necessary to ensure that commercial ships have no impact on operational security and to allow large vessels sufficient time to change course.

The probability of a charge not detonating during a test is remote. Should a charge fail to explode, the Navy will attempt to identify the problem and detonate the charge (with all marine mammal and sea turtle mitigation measures in place as described below). If these attempts fail, the Navy will recover the explosive and disarm it. Only in case of an extreme emergency or to safeguard human life, will the Navy dispose of the charge at sea. The possibility of disposing the explosive charge at sea is very remote. However, if disposal at sea is necessary, the charge will be disposed in a manner that will not pose a hazard to the public.

A detailed marine mammal and sea turtle mitigation plan has been developed to reduce or eliminate the effects of shock testing on these animals. The plan includes the same type of monitoring and mitigation efforts successfully used during the shock trial of the USS JOHN PAUL JONES in 1994 off the coast of southern California where marine mammal densities are about 25 times higher than at Mayport. The mitigation plan would build upon previous efforts to avoid or reduce potential environmental impacts (i.e., choice of Mayport based on the lower density of marine mammals). The mitigation plan is designed to address mitigation requirements specified by the NMFS.

The NMFS Biological Opinion included reasonable and prudent measures and terms and conditions to minimize the impact of the take on listed species as a result of the proposed action. The measures include: (1) aerial surveys must be conducted in sea states having conditions no greater than 33–50% whitecaps on the surface and wave height of 2–3 feet; (2) the charge shall not be detonated if visibility is less than 3 nmi; (3) detonations must not occur within 2 nmi of large sargassum rafts or aggregations of jellyfish. If sargassum rafts persist within the safety zone and cannot be avoided, the Navy should attempt to collect hatchlings from observed rafts; (4) the Navy must use satellite telemetry images of sea surface temperature and aerial survey indicators to identify the western wall of the Gulf Stream. Detonations must be confined to waters within the Gulf Stream, no closer than 2 nmi of the western boundary; (5) detonation would be postponed if a Northern Right Whale is sighted within the safety or buffer zone; (6) if listed marine mammals (other than the Northern Right Whale) are detected within the buffer zone and subsequently cannot be detected, sighting and acoustic teams will search the area for 2½ hours before assuming the animal has left the buffer zone; and (7) if during post-detonation monitoring any sea turtles or marine mammals are observed in the safety area immediately after detonation, the Navy must review its pre-detonation monitoring procedures with NMFS prior to the next detonation. To minimize impacts to endangered marine mammals, the Navy should implement all mitigation, monitoring and reporting requirements outlined in the final rule to authorize the taking of a small number of marine mammals incidental to the underwater detonation of conventional explosives in the waters off Mayport (50 CFR 216.161–216.166), in compliance with section 101(a)(5) of the MMPA. Additional requirements may also be specified in a Letter of Authorization issued under these regulations.

Integral to the mitigation plan is the concept of a Safety Range. For the SEAWOLF shock test, a 3.7 km (2 nmi) radius Safety Range will be established around the detonation point. The Safety Range takes into consideration the estimated ranges for various levels of injury and/or mortality associated with detonation of a 4,536 kg (10,000 lb) explosive. Based on analyses presented in the FEIS, the maximum distance for injury (50% probability of eardrum rupture) to a marine mammal or turtle is 1.85 km or about 1 nmi from the detonation. The 50% eardrum rupture range has been doubled to established a 3.7 km (2 nmi) Safety Range. The probability of eardrum rupture is believed to be less than 10%.

For mitigation monitoring purposes, a 1.85 km (1 nmi) Buffer Zone will be added to the 3.7 km (2 nmi) Safety Range to accommodate the possible movement of marine mammals and turtles toward the Safety Range. Specifically, the area encompassed within a 5.6 km (3 nmi) radius from the detonation point would be monitored in an effort to detect any marine mammals or turtles approaching the 3.7 km (2 nmi) Safety Range.

The mitigation plan includes three components: (1) aerial surveys and monitoring; (2) shipboard monitoring from the operations vessel and the Marine Animal Recovery Team (MART) vessel; and (3) passive acoustic monitoring using the Marine Mammal Acoustic Tracking System (MMATS). Aerial and shipboard monitoring teams would identify and locate cetaceans and turtles on the surface, whereas the acoustic monitoring team would detect and locate calls from surfaced and submerged cetaceans. All mitigation team members will be qualified, experienced professionals. Specific minimum qualifications were outlined in the FEIS.

The mitigation plan consists of three phases: specific test site selection surveys, pre-detonation monitoring, and post-detonation monitoring. The specific test site selection surveys begin three weeks prior to detonation, when an aerial survey will be flown to select one primary and two secondary test sites, based primarily on the lowest relative abundance of marine mammals and turtles. An aerial survey will be conducted at the three sites two to three days prior to each detonation in order to rank the sites by scarcity of marine mammals. Through the comparison of data collected during this survey, the selection of the primary and two secondary sites will be confirmed.

The pre-detonation monitoring will ensure the site is free of visually or acoustically detectable marine mammals, as well as visible sea turtles, large sargassum rafts, large jellyfish concentrations, large schools of fish, and large flocks of seabirds. The morning of a test day, a mitigation team comprised of 12–15 observers, experienced in marine mammal survey or acoustic detection will assist the Lead Scientist in evaluating test site conditions. The Lead Scientist will have the flexibility to move the test site should the mitigation team find unacceptable levels of marine life in the area. Beginning two and one half hours prior to and up to detonation, the mitigation team will monitor the safety range for the presence of marine mammals and sea turtles or large concentrations of sargassum, jellyfish, fish, or seabirds. The Lead Scientist will have the authority to hold the detonation or recommend moving to one of the secondary sites if the presence of marine life persists within the safety range.

Post-detonation monitoring will be conducted by the MART vessel for 48 hours after each detonation where a subsequent detonation is planned. Aerial and shipboard monitoring are intended to locate and identify any dead or injured animals. The MART vessel will be assisted by the aerial mitigation team for up to three hours per day during the 48-hour period. After the last detonation, monitoring by the aerial team and the MART will continue for seven days to detect any potentially injured or dead animals moving in the predominant direction and speed of the Gulf Stream. Coordination with stranding networks and necropsy specialists will be maintained through the SEAWOLF test period as well as after.

Comment Received on the FEIS

After the Final Environmental Impact Statement (FEIS) was distributed to the public for a 30-day review period ending on July 6, 1998, the Navy received seven comment letters. One letter came from a regulatory agency, and six from individual citizens. The comments did not raise any new issues concerning the environmental analysis or discuss any mitigation measures other than those addressed in the FEIS. Generally, concern centered on the perception that a better way to accomplish the objectives of this test must exist. However, all alternatives offered had been previously considered.

The U.S. Environmental Protection (EPA) Region Four letter commented on the extensive efforts that will be employed by the Navy to reduce risk to mammals and turtles as well as significant concentrations of other marine biota. EPA further commented that while the mitigation appeared impressive, its efficacy will become apparent only after the first detonation has been evaluated. For that reason, they continue to have some environmental concerns and await with interest the outcome of the test.

Six letters from individuals were also received. All six individuals expressed opposition to the test as currently planned. The letters recommended that alternative methods, location, or time be chosen for the test. Concerns were also expressed about the impacts to marine life that might occur. These concerns focused on stress, loss of hearing, and loss of life, particularly among endangered species. Each of these concerns is considered and evaluated in the FEIS.

Regulations Governing the Testing Decision

The proposed action, shock testing the SEAWOLF submarine at an offshore site is consistent with Section 2366, Title 10, United States Code (10 U.S.C. 2366), which states that a covered system, such as a submarine, cannot proceed beyond initial production until realistic survivability testing of the system is completed. Realistic survivability testing means testing for the vulnerability of the system in combat by firing munitions likely to be encountered in combat with the test system configured for combat.

The National Environmental Policy Act (NEPA) of 1969 and Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions'' require full evaluation of the impacts resulting from major federal actions. NEPA applies to federal actions within U.S. territory while Executive Order 12114 applies to activities and impacts outside territorial seas. The FEIS was prepared in accordance with NEPA and Executive Order 12114.

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' is intended to identify and address disproportionately high and adverse human health or environmental effects on members of minority or low-income populations. Shock testing and associated mitigation operations will occur well offshore and would result in minor and/or temporary impacts to the test site with no significant direct or indirect impacts on the human population.

The Endangered Species Act (ESA) of 1973 prohibits jeopardizing endangered and threatened species or adversely modifying critical habitats essential to their survival. Section 7 of the Act requires consultation with the NMFS and the U.S. Fish and Wildlife Service (USFWS) to determine whether any endangered or threatened species under their jurisdiction may be affected by the proposed action. No formal consultation with USFWS was required because USFWS determined that there are no species or critical habitat under their jurisdiction that could be affected. Formal consultation with NMFS was completed when the NMFS issued a Biological Opinion on December 12, 1996.

The Marine Mammal Protection Act (MMPA) of 1972 establishes a national policy designed to protect and conserve marine mammals and their habitat. Section 101(a)(5) of the MMPA allows, upon request, the incidental (but not intentional) taking of marine mammals if certain findings are made and regulations issued. Permission may be granted if the taking will have a negligible impact on the species or stock and not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. Concurrent with the release of the DEIS, the Navy submitted an incidental small take application to the NMFS. Based on this application, the NMFA published a Proposed Rule on August 2, 1996 (61 FR 40377) and participated in joint public hearings. The Proposed Rule specified take limits as well as mitigation, monitoring and reporting requirements. A Final Rule must be issued before the shock test can proceed.

The Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act) of 1972 makes it illegal for any person to transport material from the U.S. for the purpose of dumping it into ocean waters. The term ''dumping'' as defined under the Act does not include intentional placement of any device in ocean waters for a purpose other than disposal.

Conclusion

Shock testing the SEAWOLF submarine in an area offshore of Mayport, Florida is the alternative that best meets the project purpose and need, satisfies operational criteria, and minimizes environmental impacts. Potentially significant direct impacts resulting from the test include mortality, injury, and acoustic harassment of marine mammals and sea turtles. While numbers have been calculated to define the potential lethal, injurious, and harassment take that might occur, it is expected that the mitigation and monitoring program will minimize the risk to marine mammals and sea turtles. Therefore, while the Navy has submitted an application for incidental take as previously discussed, no mortalities or injuries are expected to occur.

The alternative to performing the shock test at an area offshore of Mayport, Florida is to perform the test at an area offshore of Norfolk, Virginia. Most environmental impacts of shock testing were determined to be similar at Mayport or Norfolk. However, the two areas differ significantly with respect to potential impacts on marine mammals and sea turtles. The most significant environmental difference between the areas is the much lower risk of impacts to marine mammals at the Mayport area. This comparison also indicates that Mayport has the lowest overall risk of significant environmental impacts. Considering all components of the physical, biological, and socioeconomic environment, potential impacts would be less at the Mayport area.

The ''No Action'' alternative would avoid all environmental impacts of shock testing. It does not, however, support the development of the best assessment of the survivability characteristics of the submarine. For that reason, it was dropped from further consideration.

Accordingly, the Navy selects the area off Mayport, Florida for the shock test of the SEAWOLF submarine. The SEAWOLF submarine would be shock tested in a manner consistent with the requirements stated by the NMFS and the description of the test in the FEIS. However, the Department of Defense Appropriations Act, 1999 (H.R. 4103) deletes the funding necessary to support shock testing in FY00. In light of this development, the Navy must reassess when, if ever, the shock test can be budgeted and conducted.

Dated: January 11, 1999.

H. Lee Buchanan,

Assistant Secretary of the Navy (RD&A).

[FR Doc. 99–1308 Filed 1–20–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 22, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 14, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of the Under Secretary

Type of Review: Revision.

Title: Third National Even Start Evaluation: Performance Information Reporting System and Experimental Study.

Frequency: Annually.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 1,350. Burden hours: 63,503.

Abstract: The third national Even Start evaluation calls for two data collection activities: (1) The Even Start Performance Information Reporting System involves the refinement and maintenance of a data collection system, collection and analysis of descriptive and outcome data from all Even Start grantees, and training of local Even Start project directors in data collection and technical assistance to them. (2) The Even Start Experimental Study involves recruiting 20 projects to participate in an experimental evaluation of the effectiveness of Even Start, random assignment of new families to Even Start or control groups, and measurement of child, adult, and family outcomes in fall 1999 and spring 2000.

[FR Doc. 99–1305 Filed 1–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 29, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 22, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W. , Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 15, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application Package for Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP).

Abstract: Partnerships and states proposing to conduct early intervention and scholarship components under GEAR UP need to respond to this collection of information. Applications submitted will be reviewed to access the quality of the proposed GEAR UP projects.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Additional Information: The application package requests programmatic and budgetary information needed to evaluate new applications and make funding decisions based on the authorizing legislation, program regulations, and EDGAR. The package will also be used to collect the information necessary to determine if it is in the best interest of the government to make new and continuing awards under GEAR UP.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 2,000; Burden hours: 120,000.

[FR Doc. 99–1381 Filed 1–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–11; Fundamental Research in Carbon Management

AGENCY: U.S. Department of Energy (DOE)

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES), of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the area of fundamental research underlying potential strategies to reduce or limit gaseous carbon production from fossil fuel use. Research areas of particular interest include: Geosciences research related to understanding the geophysics and geochemistry of potential reservoirs appropriate for subsurface sequestration of carbon dioxide; Energy Biosciences research related to chemical and cellular mechanisms of carbon fixation in plants; Chemical Sciences research related to enhancing our molecular level understanding of CO_2 production and utilization chemistry relevant to managing our carbon resources including, but not limited to, such areas as combustion and chemical dynamics, photochemical conversion, electrochemical energy storage and conversion, catalysis, and membrane separation science; and Materials Science research related to ceramics, metals, polymers and other materials needed for higher efficiency power systems. Carbon Management is a cooperative activity within DOE between the Office of Science and the Office of Fossil Energy. Participants within the Office of Science include both the Office of Basic Energy Sciences and the Office of Biological and Environmental Research.

DATES: Applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–11, should be received by DOE by 4:30 P.M., E.S.T., February 16, 1999. A response to the preapplications discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated to the applicant within 14 days of receipt.

The deadline for receipt of formal applications is 4:30 P.M., E.S.T., April 1, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: All preapplications, referencing Program Notice 99–11, should be sent to Dr. Nicholas B. Woodward, Division of Engineering and Geosciences, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 99–11, must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–11. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For questions concerning research topics in specific technical areas, contact the following individuals in the appropriate division of interest: Dr. Nicholas B. Woodward (301–903–4061; e-mail: nick.woodward@oer.doe.gov), Division of Engineering and Geosciences, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–5822, fax (301) 903–0271.

Dr. Gregory L. Dilworth, Division of Energy Biosciences, SC–17, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–2873, fax (301) 903–1003, e-mail: greg.dilworth@oer.doe.gov.

Dr. William Millman, Division of Chemical Sciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–5804, fax (301) 903–4110; e-mail: william.millman@oer.doe.gov.

Dr. Craig Hartley, Division of Material Sciences, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–3427, fax (301) 903–9513, e-mail: craig.hartley@oer.doe.gov.

The full text of Program Notice 99–11 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The production of fuels and chemicals by plants and microorganisms and the interconversion of greenhouse gases requires a better understanding of plant biochemistry, physiology, molecular biology, and the structure and function of sub-cellular components, and of enzymes. Improvements in combustion to reduce carbon emissions requires a molecular mechanistic fundamental understanding in chemical dynamics and theoretical chemistry and physics. Conversion of sunlight to energy requires an understanding in many areas of science, including solid state physics, photochemistry, photosynthesis, photosynthetic and nonphotosynthetic carbon fixation, plant and microbial carbon biochemistry, regulatory control of plant assimilate allocation and transport, and molecular regulatory mechanisms controlling carbon metabolism.

Fundamental, molecular level insights into cross-cutting chemical and physical processes, for example catalysis, chemical and membrane separations, and electrochemical energy storage and conversion, are expected to significantly impact carbon management. The search for increased efficiency in energy production and use requires fundamental knowledge in ceramics, metals, polymers, solid state chemistry, and condensed matter physics for materials that can withstand higher temperatures, have lower coefficients of friction, and are stronger and lighter. Disposal of carbon dioxide into geological formations requires a fundamental understanding of geometric, structural, and hydrologic properties of reservoirs and of multiphase, nonlinear transport of fluids in porous and fractured media during sequestration time-scales of greater than 100 years.

Additional information on the BES Research Program, including those elements which are not a part of this solicitation, is available at the following web site: http://www.er.doe.gov/production/bes/bes.html. For researchers who do not have access to the world wide web, please contact Dr. Nicholas B. Woodward, Geosciences Research Program, SC–15; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; phone (301) 903–5822; fax (301) 903–0271; nick.woodward@oer.doe.gov; for this information.

Investigators may also wish to obtain information about related funding opportunities in the Office of Science, Office of Biological and Environmental Research whose programs are described at web site address: http://www.er.doe.gov/production/ober/ober__top.html and in the Office of Fossil Energy whose programs are described at web site address: http://www.fe.doe.gov.

Program Funding

It is anticipated that up to $4 million will be available for multiple grant awards to be made in FY 1999, contingent on the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent on the availability of appropriated funds, progress of the research, and continuing program need. Applications received by the Office of Science under its normal competitive application mechanisms may also be deemed appropriate for consideration under this announcement and may be funded under this program.

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. The research description must be 20 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.)

Issued in Washington, DC on January 7, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–1340 Filed 1–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 4, 1999, 6:00 p.m.–9:30 p.m.

ADDRESSES: College Hill Library (Front Range Community College), 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Present and discuss building rubble disposition;
2. Review and approve the Actinide Migration Studies Technical Review Group's Request for Proposals for a technical advisor; and
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Ken Korkia at the address or telephone number listed above. You must make your request for an oral statement at least 5 days before the meeting. We will try to include the presentation in the agenda. The

Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. If you wish to make a public comment, you will be provided up to 5 minutes to present your comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m., Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on January 14, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–1338 Filed 1–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–93–NG, et al.]

Engage Energy Canada, L.P., et al.; Orders Granting, Amending, and Vacating Authorizations To Import and/or Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, and vacating various natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 14, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING, AMENDING, AND VACATING IMPORT/EXPORT AUTHORIZATION

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1441	12/01/98	Engage Energy Canada, L.P., 98–93–NG	1,000 Bcf	1,000 Bcf	Import natural gas, including liquefied natural gas, from Canada and export natural gas over a two-year term beginning on January 1, 1999, and ending on December 31, 2000.
1442	12/03/98	Aquila Canada Corp., 98–94–NG		200 Bcf	Export to Canada over a two-year term beginning on the date of first delivery.
1356–A	12/03/98	PG&E Energy Trading-Gas Corporation (Formerly PG&E Trading Corporation), 98–04–NG.			Name Change.
836–D	12/03/98	PG&E Energy Trading-Gas Corporation (Formerly PG&E Trading Corporation), 93–82–NG.			Name Change.
1443	12/08/98	Northeast Gas Markets LLC, 98–97–NG	400 Bcf		Import and export up to a combined total from and to Canada over a two-year term beginning on the date of first delivery.
1444	12/17/98	Union Pacific Fuels, Inc., 98–92–NG	200 Bcf		Import and export up to a combined total from and to Canada and Mexico over a two-year term beginning on January 1, 1999, and ending on December 31, 2000.
1446	12/17/98	KN Marketing, L.P., 98–96–NG	1 Tcf	1 Tcf	Import up to combined total from Canada and Mexico, and export up to a combined total to Canada and Mexico, beginning on the date of first import or export.
1438–A	12/17/98	Idaho Power Co., 98–91–NG	730 Bcf		Amended two-year Canadian import and export authority to increase combined volumes from 1 Bcf to 730 Bcf.
552–A	12/22/98	Boston Gas Company, 89–38–NG			Vacate long-term import authority.
1447	12/22/98	The Montana Power Company, 98–99–NG	10 Bcf		Import from Canada over a two-year term beginning on February 7, 1999, and ending on February 6, 2001.
398–A	12/23/98	Empire Natural Gas Corporation, 90–12–NG.			Vacate import/export authority.

APPENDIX.—ORDERS GRANTING, AMENDING, AND VACATING IMPORT/EXPORT AUTHORIZATION—Continued
[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1448	12/24/98	Aquila Energy Marketing Corporation, 98–100–NG.	200 Bcf		Import from Canada over a two-year term beginning on September 1, 1998, and ending on August 31, 2000.
1449	12/28/98	St. Lawrence Gas Company, Inc., 98–102–NG.	16.3 Bcf		Import from Canada over a two-year term beginning on July 26, 1998, and ending on July 25, 2000.
1450	12–29–98	Amoco Energy Trading Corporation, 98–101–NG.	300 Bcf		Import from Canada over a two-year term beginning on January 21, 1999, and ending on January 20, 2001.
1451	12/31/98	Sprague Energy Corp., 98–103–NG	50 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.

[FR Doc. 99–1339 Filed 1–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Pub. L. No. 92–463; 86 Stat. 770), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: February 11, 1999, 9:00 a.m. to 5:00 p.m., and February 12, 1999, 9:00 a.m. to 12:00 noon.

ADDRESSES: The Madison Hotel, 15th and M Streets NW, Washington, DC 20005. 202–862–1600.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202–586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- present and future emissions trading opportunities in energy efficiency and renewable energy;
- how to more effectively deploy energy efficient technologies from DOE Laboratories; and
- Federal efforts to market energy efficiency and renewable energy technologies.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 15, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–1337 Filed 1–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–20–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

January 14, 1999.

Take notice that on January 8, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective January 1, 1999:

Sub Thirteenth Revised Sheet No. 23

Algonquin asserts that the above listed tariff sheet is being filed to comply with the Commission's Letter Order issued on December 30, 1998, in Docket No. TM99–2–20–000 (December 30 Order).

Algonquin states that Sub Thirteenth Revised Sheet No. 23 is being filed herewith with a proposed effective date of January 1, 1999, in compliance with the December 30 Order.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1300 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–020]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 14, 1999.

Take notice that on January 12, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Attachment A to its transmittal letter. CNG requests various effective dates (ranging from January 1, 1998 to February 1, 1999) for these proposed tariff sheets.

CNG states that the purpose of this filing is to adopt certain tariff revisions as necessary to implement the August 31, 1998 Stipulation and Agreement filed by CNG in Docket Nos. RP97–406–000, et al. (August 31 Stipulation). The basis of CNG's rate revisions and tariff changes are established in the August 31 Stipulation and its Appendices, specifically Appendices A, B, and E. CNG's states that its filing is made to comply with Article XI, Paragraph A of the August 31 Stipulation.

CNG requests waiver of Section 154.201(b), so that CNG may rely on the materials contained in its August 31 Stipulation as the basis of its implementation filing tariff sheets. The August 31 Stipulation was approved by Commission order dated November 24, 1998. 85 FERC ¶ 61,261. As no party has sought rehearing, this order has become ''final,'' in accordance with Article I, Paragraph E of the August 31 Stipulation. Thus, the ''Effective Date'' of the August 31 Stipulation is February 1, 1999. CNG requests waiver of Section 154.207 of the regulations, so that these tariff revisions may be implemented on the August 31 Stipulation's Effective Date.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1301 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–666–000]

EME Homer City Generation, L.P.; Notice of Issuance of Order

January 14, 1999.

EME Homer City Generation, L.P. (Homer City), a subsidiary of Edison Mission Energy and an affiliate of Southern California Edison Company, filed an application requesting that the Commission authorize it to sell power at market-based rates, and for certain waivers and authorizations. In particular, Homer City requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Homer City. On January 13, 1999, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Power Sales Rates And Granting Waiver Of Notice (Order), in the above-docketed proceeding.

The Commission's January 13, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Homer City should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Homer City is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Homer City, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Homer City's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 12, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–1302 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–421–003]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 14, 1999.

Take notice that on January 11, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following tariff sheets proposed to become effective November 2, 1998:

Second Substitute First Revised Sheet No. 60D

Iroquois states that this sheet was submitted in compliance with the Commission's letter order issued on December 8, 1998 in Docket No. RP98–421–000, and replaces the tariff sheet which was submitted on December 23, 1998 in Docket No. RP98–421–002. The tariff sheet included herewith reflects changes in Iroquois notification to shippers of intra-day bumping.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1297 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Jerry B. Buckley and Brooke Buckley (Executrix); Project No. 8118–021]

Notice of Intent To Conduct Public Meeting for the Jerry B. Buckley Hydro Project on Clear Creek in Colorado

January 11, 1999.

The Federal Energy Regulatory Commission (Commission) is proposing revocation of license for the Buckley Project located on Clear Creek, near the Town of Georgetown, Clear Creek County, Colorado. The Commission will hold a public meeting on February 3, 1999, in preparation for completing the Final Environmental Assessment (FEA).

The Commission staff will hold the public meeting in the vicinity of the Buckley Project in the Town of Georgetown. The purpose of the public meeting is to entertain further comments on the Draft Environmental Assessment (DEA), issued December 23, 1998, and to ensure that any outstanding environmental issues are included in the FEA. We invite all interested resource agencies, non-governmental organizations (NGO's), and individuals to attend the meeting. The time and location of the public meeting is shown below:

Date: Wednesday, February 3, 1999

Time: 10:00 am until 12:00 pm

Place: Georgetown Town Hall, 404 6th Street, Georgetown, Colorado 80444

At the public meeting, the Commission staff will: (1) summarize the status of the revocation proceeding(s) and the environmental issues identified in the DEA; (2) receive any statements or comments on environmental issues that should be analyzed in the FEA; (3) receive any requests by the licensee, agencies, NGO's and general public on any specific proposals to transfer the license to a qualified third party; and (4) to answer any questions asked of the Commission.

Before the meeting starts, all individuals who attend, will be asked to identify themselves by signing in. Individuals that intend to make statements during the meeting will be asked to clearly identify themselves prior to speaking. Interested parties who choose not to speak, or who are unable to attend the public meeting, may provide written comments to the Commission within 15 days after the public meeting or until the *February 18, 1999* deadline. Written comments should be submitted to Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. Please affix the caption ''Jerry B. Buckley Project, FERC No. 8118–021'' to the top of all comments. For further information, please contact the environmental coordinator, CarLisa Linton at (202) 219–2802.

David P. Boergers,

Secretary.

[FR Doc. 99–1311 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

January 14, 1999.

Take notice that on January 12, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Sixth Revised Sheet No. 203, to be effective January 1, 1999.

Natural states that Substitute Sixth Revised Sheet No. 203 was filed in compliance with the Federal Energy Regulatory Commission's (Commission) order issued December 30, 1998, in Docket No. RP99–176–000 (December 30th Order).

Natural requested waiver of the Commission's Regulations to the extent necessary to permit Substitute Sixth Revised Sheet No. 203 to become effective January 1, 1999, pursuant to the December 30th Order.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1298 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–201–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

January 14, 1999.

Take notice that on January 11, 1999, Northern Border Pipeline Company (Northern Border) petitioned the Federal Energy Regulatory Commission (Commission) for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to allow Northern Border to waive certain billing adjustment provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 20, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1299 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–603–001]

Northwest Alaskan Pipeline Company; Notice of Changes in FERC Gas Tariff

January 14, 1999.

Take notice that on January 6, 1999, in compliance with the Commission's Order On Settlement and Authorizing Abandonments, Acquisition of Facilities, Waiving Tariff Provisions, and Granting Motion For Consolidation, issued December 17, 1998, Northwest Alaskan Pipeline Company (Northwest Alaskan), filed to become part of its FERC Gas Tariff Original Volume No. 2, the following tariff sheets, effective on the dates indicated:

Forty-Fourth Revised Sheet No. 5 January 1, 1999
First Revised Sheet Nos. 124DN–124DQ December 22, 1998
Second Revised Sheet No. 219 December 22, 1998
First Revised Sheet Nos. 220–223 December 22, 1998
Second Revised Sheet No. 317 December 22, 1998
First Revised Sheet Nos. 318–321 December 22, 1998
Sixth Revised Sheet No. 400 December 22, 1998

Northwest Alaskan states that this tariff filing is being made to terminate Rate Schedule X–4, and the revise Rate Schedules X–1, X–2 and X–3 to reflect the impact of the termination of Rate Schedule X–4. Northwest Alaskan says that this filing conforms to the provisions of the Commission's December 17 Order which approved a transaction that restructured the arrangements among Northwest Alaskan; its supplier, Pan-Alberta Gas Ltd.; its purchaser, Pacific Interstate Transmission Company (PITCO), and others with respect to the purchase, sale and transportation of Canadian gas. In the December 17 Order the Commission approved Northwest Alaskan's abandonment of Northwest Alaskan's sale of natural gas to PITCO under Rate Schedule X–4.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve-to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1292 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ98–3–002]

Salt River Project Agricultural Improvement and Power District; Notice of Filing

January 11, 1999.

Take notice that on December 18, 1998, Salt River Project Agricultural Improvement and Power District (Salt River) submitted revised standards of conduct in response to the Commission's Order issued September 18, 1998 (84 FERC ¶ 61,257 (1998)).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before January 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1303 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–141–000]

Tennessee Gas Pipeline Company; Notice of Application

January 14, 1999.

Take notice that on January 7, 1999, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP99–141–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon service to New Jersey Natural Gas Company (NJNG) under Rate Schedule T–143, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee states that NJNG has recently requested that it be allowed to convert its Part 157 transportation service to open-access service under Part 284 of the Regulations. Tennessee states that this conversion, to which Tennessee has agreed, would be accomplished by the cancellation of the existing Rate Schedule T–143 contract and the effectuation of a new contract pursuant to Tennessee's Rate Schedule FT–A. Tennessee states that NJNG has agreed to a rate structure under the new contract that is acceptable to Tennessee and that will be in effect through the primary term of the original contract, which will expire on the same date Rate Schedule T–143 would have expired. Tennessee states that to effectuate this conversion, Tennessee herein seeks authority to abandon service under Rate Schedule T–143 effective February 15, 1999.

Tennessee states that the transportation quantity under the conversion contract shall be 10,894 dekatherms as opposed to the 11,092 dekatherms currently provided under the Rate Schedule T–143 contract. Tennessee also states that while the stated transportation quantity under the proposed conversion contract is lower than the stated transportation quantity in the Rate Schedule T–143 contract, the decrease simply replicates the service under the Rate Schedule T–143 contract by providing for a delivered transportation quantity which is net of fuel as opposed to a received transportation quantity which is inclusive of fuel, and thus, Tennessee's service to NJNG is not being reduced.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1293 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–195–035]

Western Systems Power Pool; Notice of Filing

January 14, 1999.

Take notice that on December 7, 1998, the Western Systems Power Pool (WSPP) filed a motion on behalf of its members that requests the Commission to eliminate its requirement that WSPP public utility members file margin data associated with their WSPP sales.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before January 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1304 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

January 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1494–171.

c. *Date Filed:* December 21, 1998.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Jon Cofrancesco, (202) 219–0079.

j. *Comment Date:* February 22, 1999.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to issue a permit to Dennis Blakemore, d/b/a Honey Creek Landing (permittee), to make certain modifications to an existing commercial marina (Honey Creek Landing), located on the Honey Creek arm of Grand Lake adjacent to the Honey Creek Bridge (U.S. Highway 59). The proposed modifications include the relocation of a fuel dock and the installation of a 30′ x 57′ building containing a business office, bathhouse, and laundromat on an existing, covered boat dock. The proposed building would be located underneath the existing roof and would replace four existing boat slips.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1294 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Replacement Proposal

January 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Replacement Proposal.

b. *Project No.:* 2569–037.

c. *Date Filed:* January 6, 1999.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Black River Project.

f. *Location:* Black River, in the Town of Deferiet, Jefferson County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Mr. Sam S. Hirschey, P.E., Manager, Hydro Licensing and Regulatory Compliance, Niagara Mohawk Power Corporation, 300 Erie Boulevard, Syracuse, NY 13202, (315) 428–5564.

i. *FERC Contact:* Anum Purchiaroni, (202) 219–3297.

j. *Comment Date:* February 24, 1999.

k. *Description of Project:* Niagara Mohawk Power Corporation (NIMO), licensee for the Black River Project, filed a proposal to replace the existing 3-foot-high wooden flashboards with a pneumatic system (trade name ''rubber dam'') of a similar height, at its Deferiet Hydro Development. NIMO indicates in its filing, the replacement system will not change the maximum operating level of the impoundment, or require any operational changes. The level of the impoundment will be more constant throughout the year.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1295 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

January 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2966–099.

c. *Date filed:* December 28, 1998.

d. *Applicants:* James C. Katsekas, Zoes J. Dimos, Clement Dam Development, Inc., and Clement Dam Hydroelectric, LLC.

e. *Name of Project:* Clement Dam.

f. *Location:* On the Winnepesaukee River in Belknap and Merrimack Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Zoes J. Dimos, 27 Pimlico Ct., Bedford NH 03110–6503, (603) 669–7082.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Comment Date:* February 25, 1999.

k. *Description of Transfer:* Transfer of the license for this project is being sought in connection with the sale of the project interests of Clement Dam Development, Inc., a co-licensee, to Clement Dam Hydroelectric, LLC, which is owned by Katsekas and Dimos, the other current co-licensees.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1296 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6222–4]

Prospective Purchaser Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act; In the Matter of: NL Industries, Inc., Superfund Site, Pedricktown, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation, and Liability

Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.* A document is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the Delaware River Land Company, LLC, for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the NL Industries, Inc., Superfund Site in Pedricktown, New Jersey.

DATES: Comments must be provided by February 22, 1999.

ADDRESSES: Comments should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007–1866 and should refer to: 201 Route 130, the NL Industries, Inc., Superfund Site, U.S. EPA Docket No. II—CECLA–98–0119.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, notification is hereby given of a proposed prospective purchaser agreement concerning the NL Industries, Inc., Superfund Site in Pedricktown, NJ. This settlement was approved by EPA Region II, subject to review by the public pursuant to this document. The Delaware River Land Company, LLC, has executed a signature page committing it to participate in the settlement. Under the proposed agreement, the Delaware River Land Company, LLC, will pay $2,500 to the Hazardous Substance Superfund. In addition, the Delaware River Land Company, LLC, has agreed to abide by institutional controls and to provide access to the property. EPA believes this settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA section 101 *et seq.*, which provides EPA authority to consider, compromise, and settle a claim under sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not already been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has also signed this agreement. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Joseph Gowers, U.S. Environmental Protection Agency, 290 Broadway—19th Floor, New York, New York 10007–1866, (212) 637–4413.

The Agency's response to any comments received will be available for public inspection with U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

Dated: November 3, 1998.

William Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 99–1334 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

January 12, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, 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 March 22, 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 Commission, 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 Control Number: 3060–0010.

Title: Ownership Report.

Form Number: FCC 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,020.

Estimated Hours Per Response: 0.5 to 1.0 hours.

Frequency of Response: Annually; On occasion reporting requirements.

Total Annual Burden: 9,106 hours.

Total Annual Costs: $10,258,410.

Needs and Uses: Each permittee of a commercial AM, FM, TV, and international broadcast station shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of license. A permittee is also required to file another report or to certify that it has reviewed its current Report on file and that it is accurate, in lieu of filing a new report, when the permittee applies for a station license. Each licensee of a commercial AM, FM, and TV broadcast station shall file an Ownership Report (FCC Form 323) annually. Each licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act. In addition, the data will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities.

OMB Control Number: 3060–0754.

Title: Children's Television Programming Report.

Form Number: FCC 398.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,215.

Estimated hours per response: 4.5 hours.

Frequency of Response: Quarterly recordkeeping; Annual reporting requirements.

Total Annual Burden: 21,870 hours.

Total Annual Costs: $480,800.

Needs and Uses: The FCC 398 is required to be filed by commercial television broadcast stations. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). This form also requests information on educational and informational programs that the station plans to air in the next quarter. Each licensee is required to place in its public inspection file quarterly a Children's Television Programming Report and to file the quarterly forms annually with the Commission. Commercial television broadcast station licensees will be required to file the FCC 398 electronically with the January 10, 1999 annual filing. The FCC 398 will assist in efforts by the public and the Commission to monitor station compliance with the CTA.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1274 Filed 1–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2312]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 14, 1999.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 5, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010 (WT Docket No. 96–86) Establishments of Rules and Requirements For Access Service.

Number of Petitions Filed: 17.

Subject: Amendment of Section 73.202(b) FM Broadcast Stations (East Brewton, Alabama and Navarre, Florida) (MM Docket No. 97–233, RM–9162).

Number of Petitions Filed: 1.

Subject: Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552).

Implementation of Sections 3(n) and 332 of the Communications Act (GN Docket No. 93–252).

Regulatory Treatment of Mobile Services

Geographic Partitioning and Spectrum Disaggregation for the 220–222 MHz Service.

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1273 Filed 1–20–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, January 26, 1999 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

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 AND TIME: Thursday, January 28, 1999 at 10 a.m.

PLACE: 999 E Street, NW Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1998–27: Thomas Alan Linzey, on behalf of the Hawaii Green Party Coordinating Committee

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).

Ross Perot and Perot '96, Inc.-Statement of Reasons (LRS #507)

Petition for Rulemaking Filed by James Bopp, Jr., on Behalf of the Virginia Society for Human Life; Notice of Availability.

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. 99–1512 Filed 1–19–99; 2:57 pm]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

[Notice 1999–1]

Filing Dates for the Georgia Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Georgia has scheduled a special election on February 23, 1999, to fill the U.S. House seat in the Sixth Congressional District vacated by Congressman Newt Gingrich. Should no candidate achieve a majority vote, a Special Runoff Election will be held on March 16, 1999, between the top two vote-getters.

Committees required to file reports in connection with the Special General Election on February 23 should file a 12-day Pre-General Election Report on February 11, 1999. Committees required to file reports in connection with both the Special General and Special Runoff Election must file a 12-day Pre-General Election Report on February 11, a Pre-Runoff Report on March 4, and a Post-Runoff Report on April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Zarin, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Georgia Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on February 11, 1999, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through February 3, 1999; a Pre-Runoff Report on March 4, 1999, with coverage dates from February 4 through February 24, 1999; and a Post-Runoff Report on April 15, 1999, with coverage dates from February 25 through April 5, 1999.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on February 11, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through February 3, and a Post-General Report on March 25, with coverage dates from February 4 through March 15, 1999.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on March 4, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through February 24, and a Post-Runoff Report on April 15, with coverage dates from February 25 through April 5, 1999.

CALENDAR OF REPORTING DATES FOR GEORGIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
If Only the Special General Is Held (02/23/99), Committees Must File:			
Pre-General	02/03/99	02/08/99	02/11/99
Post-General	03/15/99	03/25/99	03/25/99
If Two Elections Are Held, But a Committee Is Involved Only in the Special General (02/23/99)			
Pre-General	02/03/99	02/08/99	02/11/99
Mid-Year	06/30/99	07/31/99	07/31/99
Committees Involved in the Special General (02/23/99) and Special Runoff (03/16/99) Must File:			
Pre-General	02/03/99	02/08/99	02/11/99
Pre-Runoff	02/24/99	03/01/99	03/04/99
Post-Runoff	04/05/99	04/15/99	04/15/99
Committees Involved Only in the Special Runoff (03/16/99) Must File:			
Pre-Runoff	02/24/99	03/01/99	03/04/99
Post-Runoff	04/05/99	04/15/99	04/15/99

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: January 14, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–1270 Filed 1–20–99; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Rae Valley Financial, Inc., Petersburg, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Petersburg State Bank, Petersburg, Nebraska.

Board of Governors of the Federal Reserve System, January 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1319 Filed 1–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the

Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Great Southern Bancorp, Inc., Springfield, Missouri; to acquire Guaranty Federal Bancshares, Inc., Springfield, Missouri, and thereby indirectly acquire Guaranty Federal Savings Bank, Springfield, Missouri, and thereby engage in the activity of operation of a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1318 Filed 1–20–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0504]

Performance Standard for Vibrio Vulnificus; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has received a petition from the Center for Science in the Public Interest (CSPI) requesting that the agency establish a performance standard of ''nondetectable'' for the marine bacterium *Vibrio vulnificus* in raw molluscan shellfish harvested from waters that have been linked to illnesses from this organism. FDA is requesting information and views from the general public on CSPI's request and on several specific questions relating to the petition.

DATES: Submit written comments by April 21, 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: Patricia S. Schwartz, Center for Food Safety and Applied Nutrition (HFS–401), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3133.

SUPPLEMENTARY INFORMATION:

I. Background

V. vulnificus is a marine bacterium that can cause infection in humans as a result of contact through cuts or wounds and consumption of food containing the organism. The association of foodborne illness with *V. vulnificus* is relatively recent; the first reported cases occurred in the 1970's. To date, the food almost exclusively associated with illness from *V. vulnificus* is raw oysters harvested from States bordering on the Gulf of Mexico. However, the bacterium is also found in marine waters and in shellfish outside the Gulf region, although raw oysters from waters outside the Gulf region have not been definitively implicated in any cases of illness.

While *V. vulnificus* can infrequently cause gastroenteritis in healthy individuals, it can cause much more serious, sometimes deadly, septicemia in certain compromised individuals. The conditions that FDA believes put consumers at risk for septicemia from *V. vulnificus* include alcoholic liver disease, diabetes, hemochromatosis, chronic hepatitis B and C, and depressed immune system function. However, the majority of cases of septicemia have occurred in consumers with alcoholic liver disease. FDA estimates that the at-risk population in the United States falls within a range of 12 to 30 million. The number of septicemia cases reported from *V. vulnificus* each year range from a low of 9 in 1990 and 1991 to a high of 33 in 1996. Septicemia in medically compromised individuals has proven fatal in about 50 percent of reported cases. The agency's policy since 1993 has been that at-risk individuals should only consume molluscan shellfish that have been adequately cooked, as thorough cooking kills *V. vulnificus*.

FDA is supporting ongoing research directed toward answering several questions about *V. vulnificus*, including research: (1) To identify the characteristics of those strains of *V. vulnificus* that are pathogenic to humans, (2) to describe the effect of environmental conditions on the occurrence of these strains in water and in shellfish, (3) to determine whether there is an infectious dose or doses of the organism in susceptible humans, (4) to determine whether there are other factors or conditions that may put consumers at risk of septicemia; and (5) research on other matters. To date, FDA has cosponsored two national scientific workshops on *V. vulnificus* to determine what is known and what needs to be learned about this organism.

In addition, since 1993, the agency has expended considerable effort on education directed toward at-risk populations to warn them to avoid raw shellfish. Recently, the agency has supported point-of-purchase advisories directed toward at-risk individuals.

FDA has also worked with the Interstate Shellfish Sanitation Conference (ISSC), a cooperative entity (whose members include FDA, the States, and the shellfish industry) dedicated to the production of safe and sanitary molluscan shellfish, to address issues related to *V. vulnificus*. The agency participated with the ISSC in developing the post-harvest refrigeration requirements that were established by the ISSC for *V. vulnificus* in oysters. Together with the ISSC, FDA is currently studying the levels of these organisms in oysters to which consumers are exposed at retail.

FDA recognizes that innovative post-harvest technologies may also reduce or eliminate *V. vulnificus* from raw oysters. To foster this approach, the agency has provided labeling advice to a company that is marketing oysters that have been subject to a post-harvest treatment involving low temperature pasteurization (see the following paragraphs). The agency hopes that companies pursuing other potential post-harvest technologies will also seek FDA's labeling assistance.

II. The Citizen's Petition

On June 29, 1998, CSPI filed a citizen petition that requests that FDA issue regulations under the Federal Food, Drug, and Cosmetic Act or Public Health Service Act requiring nondetectable levels of *V. vulnificus* in raw molluscan shellfish harvested from waters that have been linked to illnesses or deaths from this bacterium. *V. vulnificus* may be detected in virtually all oysters from such waters, at least during warm weather months. Thus, the practical effect of mandating a performance standard of ''nondetectable'' would be to impose post-harvest treatment requirements on all oysters from these waters.

The petition cites one such post-harvest treatment, that of the AmeriPure Co., which involves a mild heat treatment of in-shell oysters that is capable of killing *V. vulnificus*. FDA has reviewed data submitted by the AmeriPure Co. and those data do indicate that its process is capable of reducing *V. vulnificus* in oysters to nondetectable levels.

III. Request for Information and Views

Under FDA's administrative regulations (21 CFR 10.30(h)(3)), the agency, when reviewing a petition, may employ various procedures, including publishing a **Federal Register** notice asking for information and views. Accordingly, FDA is hereby soliciting comment on the issues raised by the CSPI petition. However, FDA is especially interested in comments, with supporting data where appropriate, on the following questions:

1. Is the AmeriPure Co. technology readily employable by the shellfish industry; if not, what barriers exist, and what steps could be taken to reduce or eliminate those barriers?
2. Other than the AmeriPure Co. process, what technologies, both present and anticipated, could significantly reduce the number of *V. vulnificus* in oysters while retaining the sensory qualities of a raw oyster? What is known about the ability of such technologies to reduce the number of *V. vulnificus* to nondetectable levels?
3. How reliable are such technologies? May they practically be required for an entire industry or a significant portion of that industry?
4. Would a performance standard have to be as low as ''nondetectable?'' Do data exist that would permit the setting of a performance standard above ''nondetectable?'' If so, at what level? Should the fact that *V. vulnificus* is found at low levels (less than 100 Most Probable Number/gram) in oysters in months (January and February) in which there have been no reported illnesses be taken into account when establishing a performance standard or level?
5. Should a performance standard apply to all raw molluscan shellfish or only to oysters?
6. What would be the quantifiable and nonquantifiable costs of a performance standard? Who would bear the costs? What would be the effect on costs, and the distribution of costs, if there was only one, patented process that could be used to meet the performance standard? What would the effect on costs be if a standard of ''nondetectable'' were put in place for all pathogens or for all raw molluscan shellfish?
7. What would be the quantifiable and nonquantifiable benefits of a performance standard? Who would enjoy the benefits?
8. Another marine pathogen, *V. parahaemolyticus*, has caused over 700 reported cases of illness (gastroenteritis) during 1997 and 1998. There has been one death reported to the Centers for Disease Control and Prevention and several hospitalizations. Illnesses from *V. parahaemolyticus* have occurred from oysters harvested outside of the Gulf of Mexico region.

Should a performance standard apply only to *V. vulnificus* or should it apply to other Vibrio species that post-harvest treatment might be able to reduce to nondetectable levels?

IV. Request for Comments

Interested persons may, on or before April 21, 1999, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1361 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1265]

Federal/State Memorandum of Understanding on Interstate Distribution of Compounded Drug Products; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft standard memorandum of understanding (MOU) that States may enter into with FDA. The draft standard MOU entitled ''Memorandum of Understanding on Interstate Distribution of Compounded Drug Products'' describes the responsibilities of the States and FDA in investigating and responding to complaints related to compounded drug products distributed interstate and addresses the interstate distribution of inordinate amounts of compounded drug products. FDA has developed this MOU in consultation with the National Association of Boards of Pharmacy (NABP), under provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: Written comments may be submitted on the draft standard MOU by March 22, 1999.

ADDRESSES: Copies of the draft standard MOU are available on the Internet at ''http://www.fda.gov/cder/pharmcomp/default.htm''. Submit written requests for single copies of the draft standard MOU entitled ''Memorandum of Understanding on Interstate Distribution of Compounded Drug Products'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5649.

SUPPLEMENTARY INFORMATION: On November 21, 1997, the President signed into law the Modernization Act (Pub. L. 105–115). Section 127 of the Modernization Act added section 503A to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353a), which exempts compounded drug products from the requirements in sections 501(a)(2)(B) (current good manufacturing practices), 502(f)(1) (adequate directions for use), and 505 (new drug provisions) of the act (21 U.S.C. 351(a)(2)(B), 352(f)(1), and 355), provided that the compounding is conducted in accordance with, and the drug products meet, the requirements in section 503A of the act.

Section 503A(b)(3)(B)(i) and (b)(3)(B)(ii) of the act states that a compounded drug product may be eligible for the previously noted exemptions if it is compounded under either of two conditions. These conditions are as follows: (1) The State in which the drug is compounded has entered into an MOU with FDA ''which addresses the distribution of inordinate amounts of compounded drug products interstate and provides for appropriate investigation by a State agency of complaints relating to compounded drug products distributed outside such State''; or (2) the State in which the drug is compounded has not entered into such an MOU and a licensed pharmacist, pharmacy, or physician ''distributes (or causes to be distributed) compounded drug products out of the State in which they are compounded in quantities that do not exceed 5 percent of the total prescription orders dispensed or distributed by such pharmacy or physician.'' Section 503A(b)(3)(B) of the act directs FDA to develop, in consultation with the NABP, a standard MOU for use by the States in complying with section 503A(b)(3)(B)(i) of the act.

FDA consulted with the NABP concerning this standard MOU, and the agency is now making available for public comment a draft standard MOU regarding the interstate distribution of compounded drug products. The draft standard MOU sets forth the responsibilities of State agencies and FDA with respect to the following: (1) Investigating and responding to complaints relating to compounded drug products distributed outside of a State, and (2) responding to the distribution of inordinate amounts of compounded drug products in interstate commerce.

FDA invites comments from interested persons on the draft standard MOU on the interstate distribution of compounded drug products. The agency is providing a 60-day comment period and is establishing a docket for the receipt of comments. As stated in its 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), after considering any comments on the draft standard MOU submitted to this docket, FDA will finalize the standard MOU and make it available for signature by individual State agencies. Until at least 90 days after the standard MOU is finalized and made available to the States for their consideration and signature, the agency intends to exercise its enforcement discretion and normally will not take regulatory action regarding the requirement in section 503A(b)(3)(B)(ii) of the act, which states that a licensed pharmacist, pharmacy, or physician may not distribute or cause to be distributed in interstate commerce compounded drug products constituting more than 5 percent of the total prescription orders dispensed or distributed.

Interested persons may, on or before March 22, 1999, submit to the Dockets Management Branch (address above) written comments on the draft standard MOU. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft standard MOU and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1366 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1169]

Draft Guidance for Industry on Content and Format for Geriatric Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Content and Format for Geriatric Labeling.'' FDA established the ''Geriatric use'' subsection in the labeling for human prescription drug products in a final rule. The Geriatric use subsection includes biological drug products in order to provide for the inclusion of information pertinent to the appropriate use of drugs in the elderly (persons aged 65 and over). This draft guidance is intended to provide industry with information on submitting geriatric labeling for human prescription drug and biological products, including who should submit revised labeling, the implementation schedule, a description of the regulation and optional standard language in proposed labeling, the content and format for geriatric labeling, and the applicability of user fees to geriatric labeling supplements.

DATES: Written comments may be submitted on the draft guidance by March 22, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''. Submit written requests for single copies of ''Content and Format for Geriatric Labeling'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Diana M. Hernandez, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Content and Format for Geriatric Labeling.'' This draft guidance has been developed in response to a final rule that published in the **Federal Register** of August 27, 1997 (62 FR 45313), establishing, in the ''Precautions'' section of prescription drug labeling, a subsection on the use of drugs in elderly or geriatric patients (aged 65 years or over) (§ 201.57(f)(10) (21 CFR 201.57(f)(10))). The geriatric labeling regulation recognizes the special concerns associated with the geriatric use of prescription drugs and acknowledges the need to communicate important information so that drugs can be used safely and effectively in older patients. The medical community has become increasingly aware that prescription drugs can produce effects in the elderly that are significantly different from those produced in younger patients. Geriatric labeling information is of increasing importance because of the growing proportion of the population that is over 65 years of age and the significant use of medications by this age group.

This draft guidance discusses which application holders are responsible for submitting revised labeling and summarizes the implementation schedule for submitting geriatric labeling. The geriatric labeling regulation includes six paragraphs (§ 201.57(f)(10)(i) through (f)(10)(vi)) that outline various options for statements in the ''Geriatric use'' subsection, based on the type of information available and the interpretation of that information. The draft guidance summarizes the requirements of § 201.57(f)(10)(i) through (f)(10)(vi), and it provides detailed guidance on the submission of this information. In addition, the content and format for geriatric labeling, as well as the applicability of user fees to geriatric labeling supplements, are discussed in detail in the draft guidance document.

This draft guidance is a level 1 draft guidance document consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the content and format of geriatric labeling. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1363 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1267]

Draft Guidance for Industry on NDA's: Impurities in Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''NDA's: Impurities in Drug Substances.'' This draft document recommends that applicants submitting new drug applications (NDA's) and holders of supporting Type II drug master files (DMF's) for drug substances not considered new drug substances refer to the guidance for industry on reporting drug substance impurities in the International Conference on Harmonisation (ICH) guidance document entitled ''Q3A Impurities in New Drug Substances.''

DATES: Written comments on the draft guidance document may be submitted by April 21, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Eric P. Duffy, Office of New Drug Chemistry, Office of Pharmaceutical Science, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7310.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''NDA's: Impurities in Drug Substances.'' Although ICH guidance document entitled ''Q3A Impurities in New Drug Substances,'' which was published in the **Federal Register** on January 4, 1996 (61 FR 371), provided guidance to industry on the reporting, identification, and qualification of impurities in new drug substances produced by chemical syntheses, FDA believes that the guidance provided in ICH Q3A also applies to drug substances produced by chemical syntheses that are not considered new drug substances. FDA recommends that applicants preparing NDA's and holders preparing Type II DMF's refer to the reporting information contained in that document.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on reporting impurities in drug substances for certain NDA's and DMF's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

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

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1364 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–263]

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: On Site Inspection for Durable Medical Equipment (DME) Supplier Location & Supporting Regulations in 42 CFR, Section 424.57.

Form Nos.: HCFA–R–263 (OMB# 0938–0749).

Use: To identify and implement measures to prevent fraud and abuse in the Medicare program. Controlling the entry of suppliers of durable medical equipment, prosthetics, orthotics, or supplies (DMEPOS) to Medicare has been identified as one of the most effective ways to prevent fraud and abuse. To meet this challenge, HCFA is moving forward with a plan to improve the quality of the process for enrolling and reenrolling DMEPOS suppliers into the Medicare program by enhancing procedures for verifying supplier information collected on the Form HCFA 855S (DMEPOS Supplier Enrollment Application, OMB Approval No. 0938–0685). This form will be used to complete information on DMEPOS suppliers' compliance with regulations found in 42 CFR 424.57.

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents: 40,000.

Total Annual Responses: 40,000.

Total Annual Hours: 20,000.

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: January 11, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards

[FR Doc. 99–1328 Filed 1–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–180]

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: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title of Information Collection: Field Testing of the Uniform Needs Assessment Instrument (UNAI): Small-Scale Trial—Phase 2.

Form No.: HCFA–R–180 (OMB# 0938–0680).

Use: In testing, the Uniform Needs Assessment Instrument (UNAI) will be used to assess the needs of all patients being discharged from Medicare-certified hospitals who are identified, through use of a screener, as needing extensive hospital discharge planning and post-care. Dual assessments will be performed to assess inter-rater reliability. The UNAI is intended to help ensure appropriate post acute care and continuity of care between acute, post-acute and long-term care by transmitting key information to patients, families, and post acute care providers on the status and care needs of patients at the time of acute care discharge. The debriefing of discharge planners will examine the feasibility, burden, and utility of UNAI items and their view of the likely impact on the quality of discharge planning and continuity of care. The goal is to help HCFA determine whether such a system would improve quality of care for Medicare beneficiaries.

Frequency: On occasion.

Affected Public: Business or other for-profit, Individuals or Households, and Not-for-profit institutions.

Number of Respondents: 500.

Total Annual Responses: 720.

Total Annual Hours: 847.

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: January 11, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–1329 Filed 1–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0270]

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 collection 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 of an unanticipated event and the fact that the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. In order to assess and renovate internal systems and interfaces with business partners for Y2K, the Agency cannot reasonably comply with the normal clearance procedures. Without this information, HCFA will be unable to assess the millennium readiness status of the business partners and will be unable to make operational and contracting decisions to assure the safety and continuity of health care services provided to Medicare beneficiaries, and payments to providers of services. This request complies with the procedures for emergency clearance of Y2K surveys as outlined in the OMB memo dated 5/26/98.

HCFA is requesting OMB review and approval of this collection within 11 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 10 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 Request: New collection.

Title of Information Collection: Managed Care organization Year 2000 Continuity and Contingency Planning (BCCP) Status Report.

Form Number: HCFA–R–0270.

Use: This information is needed to determine the status of HCFA's business partners millennium readiness.

Frequency: Monthly.

Affected Public: Federal Government, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 350.

Total Annual Responses: 4,200.

Total Annual Hours Requested: 44,450.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. ADD WEB SITE ADDRESS to access S.S.

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 10 working days:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–1415 Attn: Dawn Willinghan 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: January 12, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–1330 Filed 1–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection, Comment Request; American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: ''Strength of Tobacco Control Research Evaluation''

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: ''Strength of Tobacco Control Research Evaluation''. *Type of Information Request:* New. *Need and Use of Information Collection:* ''The Strength of Tobacco Control Research Evaluation'' will collect data on financial resources, capacity, and specific efforts to control tobacco use. The data will be collected from professionals working in the field, in project management, and in senior agency administration within major state-level organizations concerned with tobacco control, in all 50 states and the District of Columbia. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large-scale, 17-state demonstration project. Data will be used to develop a ''strength of tobacco control'' construct for use in evaluation of the overall ASSIST intervention. This study will also provide valuable information to Government agencies and to the general public necessary for tobacco control research. Data will be collected from September to November 1999, from approximately 1,428 individuals in 357 organizations in the 50 states and the District of Columbia. *Frequency of Response:* One-time study. *Affected*

Public: Individuals. *Type of Respondents:* Professionals in tobacco control organizations. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,428; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .54; and *Estimated Total Annual Burden Hours Requested:* 773. The annualized cost to the respondents is estimated at $31,833. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Frances Stillman, Ed.D., Public Health Advisor, National Cancer Institute, Executive Plaza North, Room 241, 6130 Executive Boulevard MSC 7337, Bethesda, Maryland 20892–7337, or call non-toll free number (301) 496–8584, or FAX your request to (301) 496–8675.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 12, 1999.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 99–1422 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 11, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard S. Fisher, PhD Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Room 400C, MSC–7180, Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1269 Filed 1–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Immunological Sciences Initial Review Group, Immunobiology Study Section.

Date: January 21–22, 1999.

Time: 9:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 2 Portola Plaza, Monterey, CA 93940.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 21, 1999.

Time: 1:00 PM to 1:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joe Marwah, PHD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 21, 1999.

Time: 2:00 PM to 2:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93–878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1268 Filed 1–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–08–1020–00, 1613P]

Notice of Meeting

AGENCY: Bureau of Land Management, Lewistown Field Office.

SUMMARY: The Lewistown Resource Advisory Council will meet February 9 and 10, 1999, at the Montana Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana.

The February 9 portion of this meeting will begin at 7:45 a.m. Throughout the day the council will elect officers for the coming year; hear two presentations concerning cottonwood regeneration along the Upper Missouri River; discuss increased visitor use along the Upper Missouri River; discuss U.S. Forest Service involvement with the Resource Advisory Councils; and hear presentations concerning grazing permit renewals and two areas of critical environmental concern. The session will adjourn at 4:30 p.m.

The February 10 portion of this meeting will begin at 7:45 a.m. The council will hear presentations concerning off-highway vehicle use on public lands; land exchanges; prairie dogs; range improvement projects; and the Sun River Project. There will be a public comment period at 11:30 a.m. This session will adjourn at 3:30 p.m.

DATES: February 9 and 10, 1999.

LOCATION: Montana Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana.

FOR FURTHER INFORMATION: Contact Lewistown Field Manager, Bureau of Land Management, Box 1160, Airport Road, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period at 11:30 a.m. on February 10.

Dated: January 7, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–1281 Filed 1–20–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–00–NPRA]

Notice of Availability of Proposed Notice of Sale—National Petroleum Reserve—Alaska Proposed Oil and Gas Lease Sale 991; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice of Availability of the Proposed Notice of Sale for the proposed Oil and Gas Lease Sale 991 in the National Petroleum Reserve-Alaska (NPR–A) is published as a matter of information to the public.

With regard to oil and gas leasing in the NPR–A, the Secretary of the Interior is providing the State of Alaska the opportunity to review the proposed Notice of Sale in regard to, among other things, Coastal Zone Management review.

The proposed Notice of Sale for proposed Sale 991 may be obtained by written request to the Public Information Center, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599 or by telephone at 907–271–5960.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is tentatively scheduled for May 1999.

EFFECTIVE DATE: January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Gene Terland or Robert Merrill, BLM Alaska State Office, 907–271–3833.

Dated: January 15, 1999.

Sally Wisely,

Acting State Director.

[FR Doc. 99–1437 Filed 1–20–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–1430–00; CAAZCA 37434, CAAZCA 6637]

California: Notice of Realty Action (NORA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Conversion and renewal of concession lease and future expansion of concession.

SUMMARY: Walter's Camp, Inc., Frank Dokter, President, concessioner at the Bureau of Land Management's (BLM) Walter's Camp concession on the Colorado River near Palo Verde, California, has submitted an application to renew the Walter's Camp concession contract. The application includes extending the term of the land use authorization and requests authorization for future expansion.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Yuma Field Office, BLM, address below. Objections will be reviewed by the Field Manager, BLM, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any action by the Field Manager, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, Realty Specialist, or Joy Gilbert, Senior Technical Specialist, BLM, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, AZ 85365, (520) 317–3200.

SUPPLEMENTARY INFORMATION: The Walter's Camp concession is currently authorized under a BLM contract, which expires on April 14, 2000 (issued under the authority of the Reclamation Act). The new lease would be issued under the Federal Land Policy and Management Act (43 U.S.C. 1701, 1732). The current concessioner has performed its obligations to the satisfaction of the BLM under the existing contract. Pursuant to the provisions of the existing concession contract, the current concessioner may be granted an extension for an additional period of years if the concessioner has substantially mitigated deterioration of improvements due to use and age. The land is not needed for a Federal purpose at this time. The proposal is in accordance with the Yuma District Resource Management Plan (March 1987), and the Ehrenberg-Cibola Recreation Area Management Plan (May 1994) which state that the BLM will continue to lease recreation areas for concessioner operation to ensure that recreation opportunities are provided for all publics. The plans also state that additional Federal lands will be available for expansion of existing concessions.

Walter's Camp, Inc., provides camping and recreational opportunities along the Colorado River. Renewal of the concession lease would allow for continued use and the proposed expansion would fulfill the increasing public demands for recreational opportunities.

Dated: January 8, 1999.

Maureen A. Merrell,

Assistant Field Manager, Business and Fiscal Services/Acting Field Manager.

[FR Doc. 99–1280 Filed 1–20–99; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–403]

Certain Acesulfame Potassium and Blends and Products Containing Same; Notice of Commission Determinations Not To Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930 and Not To Review an Order Denying a Motion for Sanctions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) finding no violation of section 337 and not to review ALJ Order No. 23 which denied a motion for sanctions.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3098. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 1997, based on a complaint filed by Nutrinova Nutrition Specialties and Food Ingredients GmbH of Frankfurt am Main, Federal Republic of Germany, and Nutrinova Inc., of Somerset, New Jersey (collectively referred to as ''complainants''). 62 FR 62070 (1997). The complaint named four respondents—Hangzhou Sanhe Food Company Ltd., of Zheijiang, People's Republic of China; JRS International, Inc., of Garfield, New Jersey; Dingsheng, Inc., of Temple City, California; and WYZ Tech., of Chino, California. Hangzhou Sanhe Food Additives Factory, of Hangzhou, Zheijiang, Peoples Republic of China was subsequently added as a respondent.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and/or selling within the United States after importation certain acesulfame potassium or blends or products containing same by reason of infringement of claims 1, 2, 3, 4 or 5 of U.S. Letters Patent 4,695,629 (''the '629 patent'') or claims 1 or 2 of U.S. Letters Patent 4,158,068 (''the '068 patent''). Acesulfame potassium is an artificial sweetener.

The ALJ held a tutorial on the technology of artificial sweeteners and the processes for their manufacture on June 5, 1998. The evidentiary hearing was held from June 29, 1998, to July 10, 1998.

On May 12, 1998, complainants filed a motion seeking the imposition of monetary and non-monetary sanctions against respondents for respondents' failure to provide timely discovery. The motion was supported in part and opposed in part by the Commission investigative attorney (IA) and opposed by respondents. On August 14, 1998, the ALJ issued Order No. 23, denying complainants' motion for sanctions, but offering complainants an opportunity to seek reopening of the record for the purpose of presenting additional facts and arguments relevant to respondents' belatedly-produced discovery. Complainants declined to seek reopening of the record.

On November 20, 1998, the ALJ issued his final ID, in which he concluded that there was no violation of section 337, based on the following findings: (a) claims 1–5 of the '629 patent are not infringed by respondents'' accused process; (b) claims 1–2 of the '068 patent are invalid as obvious over the prior art; (c) claims 1–2 of the '068 patent are not infringed by respondents accused product.

On December 3, 1998, complainants filed a petition for review of the ID and Order No. 23, arguing that the ALJ erred in all of his adverse findings relating to failure to impose sanctions and in his infringement analysis of the '629 patent. Complainants did not petition for review of the findings in the ID with respect to the '068 patent. The IA also petitioned for review of the ID and Order No. 23 on policy grounds. On December 10, 1998, respondents filed a response to the petitions for review. The IA also filed a response to complainants' petition for review.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Issued: January 15, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1341 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Review)]

Barium Chloride From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on barium chloride from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1999, the Commission determined that the domestic interested party response to its notice of institution (63 F.R. 52750, Oct. 1, 1998) of the subject five-year review was adequate. The Commission also determined that the respondent interested party response was inadequate because no respondent interested party responded to the Commission's notice. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 4, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 9, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 9, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1347 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the response submitted by Chemical Products Corp. to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–409]

Certain CD–ROM Controllers, and Products Containing Same-II; Notice of Commission Decision To Extend the Deadline for Determining Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by seven (7) days, or until February 3, 1999, the deadline for determining whether to review an initial determination (ID)(Order No. 9) issued by the presiding administrative law judge (''ALJ'') in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094.

SUPPLEMENTAL INFORMATION: This investigation was instituted on May 7, 1998, based on a complaint filed by Oak Technology Inc (''Oak''). 63 Fed. Reg. 26625. Among the respondents is United Microelectronics Corp. (''UMC''). The complaint alleges, inter alia, that UMC engaged in unlawful activities in violation of section 337 through the unlicensed importation and sale for importation of goods infringing claims 1–5 and 8–10 of U.S. Letters Patent 5,581,715. Oak seeks the imposition of a cease and desist order and an exclusion order.

Complainant Oak filed a previous complaint before the Commission based on the same products and the same patent, naming UMC as a proposed respondent. Prior to institution of an investigation, Oak entered into a settlement/licensing agreement with UMC, and withdrew its complaint as to UMC. Prior to institution of the present investigation, UMC filed a letter with the Commission alleging that all its activities were authorized by the settlement agreement. Oak alleges that the sales and importation activities complained of are outside the provisions of the settlement agreement.

On August 28, 1998, the ALJ issued Order No. 7 terminating the investigation as to UMC for failure to state a section 337 claim. Complainant Oak and OUII filed petitions for review of the ID and UMC responded to those petitions. On October 7, 1998, the Commission reviewed and reversed Order No. 7.

In its opinion, the Commission noted that a motion for summary determination was pending, and stated that if the disposition of that motion came before the Commission, the Commission would ''address the matter as necessary and appropriate.'' On December 23, 1998, the ALJ issued Order No. 9 granting UMC's motion for summary determination. On December 31, 1998, complainant Oak filed a timely petition for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR § 210.42(h)(3).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: January 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1348 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–402]

Advice Concerning the Addition of Certain Pharmaceutical Products and Chemical Intermediates to the Pharmaceutical Appendix to the HTS

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on December 23, 1998, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–402, Advice Concerning the Addition of Certain Pharmaceutical Products and Chemical Intermediates to the Pharmaceutical Appendix to the Harmonized Tariff Schedule of the United States, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

At the request of USTR, the Commission will provide: (1) A summary description of the products contained in the existing Pharmaceutical Appendix and the modifications to be made to that Appendix; (2) an explanation of the relationship of the various elements in the Appendix to the HTS; and (3) estimates of current U.S. imports, and where possible, U.S. exports of the products included in the Pharmaceutical Appendix and the proposed additions to the Appendix, based on product groupings as necessary. The Commission will submit its report to the USTR no later than April 1, 1999.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Information on general aspects of the study may be obtained from Elizabeth Howlett, Office of Industries (202–205–3365), or, on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091).

Background

As one part of the Uruguay Round Agreements, the United States and 21 other countries agreed to the reciprocal elimination of duties, effective January 1, 1995, on approximately 7,000 pharmaceutical products and chemical intermediates used primarily for the production of pharmaceuticals. Commitments to eliminate duties on these products are reflected in each participant's market access schedule.

These countries also agreed to conduct a review, at least once every three years, to identify further products that could be covered by the pharmaceutical duty elimination initiative. The first review concluded with the addition of approximately 470 products, implemented on April 1, 1997. Participants, including the United States, are undertaking a second review, focusing on the addition of approximately 750 pharmaceutical products and chemical intermediates used primarily for the production of pharmaceuticals (a list of covered products is attached). According to USTR, these additional products represent products recommended by the U.S. private sector in response to a notice published by USTR in the **Federal Register** of December 29, 1997, as well as products proposed by the Governments of other participating countries. According to USTR, the Industry Sectoral Advisory Committee on Chemicals (ISAC–3) was consulted throughout the negotiations and this ISAC has endorsed the final list of products under consideration.

In section 111(b) of the URAA, Congress explicitly authorized the President to proclaim further modification of any duty for articles contained in a tariff category that was part of the U.S. ''zero-for-zero'' initiative. The Statement of Administrative Action which Congress approved in the URAA notes that the President would use section 111(b) authority to grant duty-free treatment for new pharmaceutical products such as those now under consideration. This authority is subject only to the conditions set forth in section 111 which include compliance with the consultation and layover provisions of section 115 of the URAA. One of the requirements set out in section 115 is that the President ''obtain advice regarding the proposed action'' from the Commission. Pursuant to section 115 and section 332(g) of the Tariff Act of 1930, USTR has requested that the Commission provide advice in the form of additional information on the pharmaceutical products and chemical intermediates currently under consideration.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written submissions should focus on the levels of exports and imports for the items included in this investigation. Written statements should be received by the close of business on February 17, 1999. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: January 14, 1999.

Donna R. Koehnke,

Secretary.

Additional Prefixes and Suffixes for Salts, Esters and Hydrates of INNS

Benzoate
Difumarate
Dipivoxil
Monobenzoate
Tetraisopropyl

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION

INN	CAS RN
Abacavir	136470–78–5
Abafungin	129639–79–8
Abarelix	183552–38–7
Abiraterone	154229–19–3
Acreozast	123548–56–1
Agomelatine	138112–76–2
Alatrofloxacin	157182–32–6
Alinastine	154541–72–7
Almotriptan	154323–57–6
Almurtide	61136–12–7
Amelometasone	123013–22–9
Amlintide	122384–88–7
Apadoline	135003–30–4
Arcitumomab	154361–48–5
Aripiprazole	129722–12–9
Arofylline	136145–07–8
Aseripide	153242–02–5
Asimadoline	153205–46–0
Atiprimod	123018–47–3
Atizoram	135637–46–6
Atliprofen	108912–17–0
Atreleuton	154355–76–7

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION—Continued

INN	CAS RN
Aviptadil	40077–57–4
Avitriptan	151140–96–4
Avorelin	140703–49–7
Avotermin	182212–66–4
Bamaquimast	135779–82–7
Basiliximab	179045–86–4
Becaplermin	165101–51–9
Bectumomab	158318–63–9
Belaperidone	156862–51–0
Beloxepin	135928–30–2
Bepotastine	125602–71–3
Bibapcitide	153507–46–1
Biricodar	159997–94–1
Blonanserin	132810–10–7
Brasofensine	171655–91–7
Brinzolamide	138890–62–7
Carafiban	177563–40–5
Cariporide	159138–80–4
Cedelizumab	156586–90–2
Ceftizoxime alapivoxil	135821–54–4
Celgosivir	121104–96–9
Cemadotin	159776–69–9
Cerivastatin	145599–86–6
Cetermin	157238–32–9
Cevimeline	107233–08–9
Choriogonadotropin alfa	177073–44–8
Cizolirtine	142155–43–9
Clenoliximab	182912–58–9
Clevidipine	166432–28–6
Clevudine	163252–36–6
Colesevelam	182815–43–6
Dabelotine	118976–38–8
Dalcotidine	120958–90–9
Danaparoid sodium	83513–48–8
Daniplestim	161753–30–6
Dapitant	153438–49–4
Declopramide	891–60–1
Deltibant	140661–97–8
Dexefaroxan	143249–88–1
Dexsotalol	30236–32–9
Donepezil	120014–06–4
Dronedarone	141626–36–0
Droxinavir	159910–86–8
Dutasteride	164656–23–9
Ecenofloxacin	162301–05–5
Edrecolomab	156586–89–9
Efavirenz	154598–52–4
Elacridar	143664–11–3
Eldacimibe	141993–70–6
Eletriptan	143322–58–1
Elinafide	162706–37–8
Embusartan	156001–18–2
Emoctakin	142298–00–8
Eniluracil	59989–18–3
Enlimomab pegol	169802–84–0
Ensaculin	155773–59–4
Eperezolid	165800–04–4
Eplerenone	107724–20–9
Eptifibatide	148031–34–9
Fabesetron	129300–27–2
Fandofloxacin	164150–99–6
Faralimomab	167816–91–3
Fasidotril	135038–57–2
Fasoracetam	110958–19–5
Felvizumab	167747–20–8
Fexofenadine	83799–24–0
Fidarestat	136087–85–9
Filaminast	141184–34–1
Flibanserin	167933–07–5
Follitropin beta	150490–84–9

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION—Continued

INN	CAS RN
Fomivirsen	144245–52–3
Forasartan	145216–43–9
Foropafant	136468–36–5
Frovatriptan	158747–02–5
Fudosteine	13189–98–5
Fulvestrant	129453–61–8
Furomine	142996–66–5
Gacyclidine	68134–81–6
Ganaxolone	38398–32–2
Gatifloxacin	160738–57–8
Gavestinel	153436–22–7
Glaspimod	134143–28–5
Glufosfamide	132682–98–5
Hemoglobin crosfumaril	142261–03–8
Ibutamoren	159634–47–6
Icopezil	145508–78–7
Igovomab	171656–50–1
Indinavir	150378–17–9
Indisetron	141549–75–9
Infliximab	170277–31–3
Insulin aspart	116094–23–6
Insulin glargine	160337–95–1
Interferon alfacon-1	118390–30–0
Iocanlidic acid (123 I)	74855–17–7
Ioflupane (123 I)	155798–07–5
Iometopane (123 I)	136794–86–0
Ipamorelin	170851–70–4
Iroplact	154248–96–1
Israpafant	117279–73–9
Ivabradine	155974–00–8
Keliximab	174722–30–6
Lagatide	157476–77–2
Landiolol	133242–30–5
Lanepitant	170566–84–4
Lasinavir	175385–62–3
Ledoxantrone	113457–05–9
Lefradafiban	149503–79–7
Levocetirizine	130018–77–8
Levosalbutamol	34391–04–3
Licostinel	153504–81–5
Linetastine	159776–68–8
Linezolid	165800–03–3
Lintitript	136381–85–6
Lintuzumab	166089–32–3
Lirexapride	145414–12–6
Lodenosine	110143–10–7
Lotrafiban	171049–14–2
Lumefantrine	82186–77–4
Lurtotecan	149882–10–0
Mazokalim	164178–54–5
Melagatran	159776–70–2
Meluadrine	134865–33–1
Mespiperone (11 C)	94153–50–1
Metesind	138384–68–6
Milacainide	141725–10–2
Milameline	139886–32–1
Milfasartan	148564–47–0
Milodistim	137463–76–4
Minalrestat	129688–50–2
Minodronic acid	127657–42–5
Miproxifene	129612–87–9
Mitiglinide	145375–43–5
Mivobulin	122332–18–7
Moxifloxacin	151096–09–2
Moxilubant	146978–48–5
Nagrestipen	166089–33–4
Nateglinide	105816–04–4
Nelfinavir	159989–64–7
Nelzarabine	121032–29–9
Nepadutant	183747–35–5

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION—Continued

INN	CAS RN
Nepafenac	78281–72–8
Nepaprazole	156601–79–5
Nepicastat	173997–05–2
Nerelimomab	162774–06–3
Nifekalant	130636–43–0
Nolatrexed	147149–76–6
Nolpitantium besilate	155418–06–7
Nonacog alfa	113478–33–4
Oberadilol	114856–44–9
Omapatrilat	167305–00–2
Omiloxetine	176894–09–0
Opanixil	152939–42–9
Opratonium iodide	146919–78–0
Oprelvekin	145941–26–0
Orazipone	137109–78–5
Orbofiban	163250–90–6
Osanetant	160492–56–8
Osutidine	140695–21–2
Pagoclone	133737–32–3
Palinavir	154612–39–2
Palonosetron	135729–56–5
Pamaqueside	150332–35–7
Pamiteplase	151912–42–4
Paricalcitol	131918–61–1
Pegmusirudin	186638–10–8
Peldesine	133432–71–0
Pelubiprofen	69956–77–0
Pemetrexed	137281–23–3
Perifosine	157716–52–4
Pexiganan	172820–23–4
Pibutidine	103922–33–4
Pifonakin	112721–39–8
Pleconaril	153168–05–9
Pralmorelin	158861–67–7
Pramlintide	151126–32–8
Pranazepide	150408–73–4
Pregabalin	148553–50–8
Prucalopride	179474–81–8
Pumaprazole	158364–59–1
Quetiapine	111974–69–7
Quilostigmine	139314–01–5
Raltitrexed	112887–68–0
Ranelic acid	135459–90–4
Rapacuronium bromide	156137–99–4
Resocortol	76675–97–3
Retigabine	150812–12–7
Revatropate	149926–91–0
Rifalazil	129791–92–0
Rismorelin	146706–68–5
Ritonavir	155213–67–5
Rituximab	174722–31–7
Rivastigmine	123441–03–2
Rizatriptan	144034–80–0
Robalzotan	169758–66–1
Roflumilast	162401–32–3
Rosiglitazone	122320–73–4
Roxifiban	170902–47–3
Rupatadine	158876–82–5
Sabcomeline	159912–53–5
Samarium (153 Sm) lexidronam	154427–83–5
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Sampatrilat	129981–36–8
Saredutant	142001–63–6
Scopinast	145574–90–9
Seocalcitol	134404–52–7
Sevelamer	52757–95–6
Sibrafiban	172927–65–0
Sildenafil	139755–83–2
Silperisone	140944–31–6

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION—Continued

INN	CAS RN
Sinapultide	138531–07–4
Sinitrodil	143248–63–9
Sipatrigine	130800–90–7
Sitafloxacin	127254–12–0
Sivelestat	127373–66–4
Soretolide	130403–08–6
Sulesomab	167747–19–5
Sunepitron	148408–65–5
Taltirelin	103300–74–9
Talviraline	169312–27–0
Targinine	17035–90–4
Tasonermin	94948–59–1
Tazomeline	131987–54–7
Technetium (99m Tc) nofetumomab merpentan	165942–79–0
Technetium (99m Tc) pintumomab	157476–76–1
Technetium (99mTc) apcitide	178959–14–3
Temiverine	173324–94–2
Temocaprilat	110221–53–9
Terbogrel	149979–74–8
Tererstigmine	147650–57–5
Ticolubant	154413–61–3
Tifacogin	148883–56–1
Tilnoprofen arbamel	159098–79–0
Tivirapine	137332–54–8
Tobicillin	151287–22–8
Trafermin	131094–16–1
Trastuzumab	180288–69–1
Trecovirsen	148998–94–1
Tresperimus	160677–67–8
Upenazime	95268–62–5
Urokinase alfa	99821–47–3
Valganciclovir	175865–60–8
Valnemulin	101312–92–9
Valspodar	121584–18–7
Vatanidipine	116308–55–5
Vedaclidine	141575–50–0
Vinflunine	162652–95–1
Xaliproden	135354–02–8
Xemilofiban	149820–74–6
Ziconotide	107452–89–1
Zinostatin stimalamer	123760–07–6
Zolmitriptan	139264–17–8

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION

IUPAC Name	CAS No.
(S)-but-3-yn-2-ol	2914–69–4
2-(4-fluorobenzyl)thiophene	63877–96–3
5-amino-N,N′-bis[2-acetoxy-1-(acetoxymethyl)ethyl]-2,4,6-triiodoisophthalamide	148051–08–5
5-amino-N,N′-bis(2,3-dihydroxypropyl)-2,4,6-triiodoisophthalamide	76801–93–9
(S)-alpha-chloroformylethyl acetate	36394–75–9
Diethyl dipropylmalonate	6065–63–0
5-methyl-N-[4-(sulfamoyl)phenethyl]pyrazine-2-carboxamide	33288–71–0
(5aR,11bS)-9,10-dimethoxy-2-propyl-4,5,5a,6,7,11b-hexahydrobenzo[f]thieno[2,3-c] quinoline hydrochloride	178357–37–4
Methyl N-(phenoxycarbonyl)-L-valinate	153441–77–1
(+-)-6-fluoro-1-methyl-4-oxo-7-(piperazin-1-yl)-4H-[1,3]thiazeto-[3,2-a]quinoline-3 -carboxylic acid	112984–60–8
Methyl 3-amino-4,6-dibromo-o-toluate	119916–05–1
4,6-dibromo-3-fluoro-o-toluic acid	119916–27–7
7-bromo-1-cyclopropyl-6-fluoro-5-methyl-4-oxo-1,4-dihydroquinoline-3-carboxylic acid	119916–34–6
2-mercapto-5-(trifluoromethyl)anilinium chloride	4274–38–8
2-(3-bromophenoxy)tetrahydropyran	57999–49–2
6-chloro-5-(2-chloroethyl)indol-2(3H)-one	118289–55–7
6-chloroindol-2(3H)-one	56341–37–8
6-methoxy-1,2,3,4-tetrahydro-1-naphthone	1078–19–9
N-[N-(tert-butoxycarbonyl)-L-alanyl]-L-alanine hydrate	90303–36–9
2,2′-dithiodibenzonitrile	33174–74–2
2-ethoxy-5-[(4-methylpiperazin-1-yl)sulfonyl]benzoic acid	194602–23–8
1-methyl-4-nitro-3-propylpyrazole-5-carboxamide	139756–01–7
(S)-2-(4-fluorophenyl)-3-methylbutyric acid	55332–37–1
[3-(benzimidazol-2-yl)propyl]methylamine	64137–52–6
7-chloro-5-(2-fluorophenyl)-1H-1,4-benzodiazepin-2(3H)-one	2886–65–9
2-bromo-4′-chloro-2′-(2-fluorobenzoyl)acetanilide	1584–62–9
2′-benzoyl-2-bromo-4′-chloroacetanilide	41526–21–0
(RS)-serinohydrazide hydrochloride	55819–71–1
2,3,4-trihydroxybenzaldehyde	2144–08–3
Dimethyl chloromalonate	28868–76–0
4,6-dichloro-5-(2-methoxyphenoxy)-2,2′-bipyrimidinyl	150728–13–5
4-tert-butylbenzenesulfonamide	6292–59–7
Methyl 3-[(methoxycarbonylmethyl)sulfamoyl]thiophene-2-carboxylate	106820–63–7
Methyl 4-hydroxy-2-methyl-2H-thieno[2,3-e][1,2]thiazine-3-carboxylate 1,1-dioxide	59804–25–0
Tert-butyl(1S,9S)-6,10-dioxo-9-phthalimidooctahydropyridazo[1,2-a][1,2]diazepine-1-carboxylate	106928–72–7
Ethyl (R)-2-hydroxy-4-phenylbutyrate	90315–82–5
1-benzyl hydrogen (S)-4-phthalimidoglutarate	88784–33–2
(S)-1-(benzyloxycarbonyl)hexahydropyridazine-3-carboxylic acid	65632–62–4
Methyl {(1S,2R)-1-benzyl-3-[(3S,4aS,8aS)-3-(tert-butylcarbamoyl)decahydro -2-isoquinolyl]-2-hydroxypropyl}carbamate	178680–13–2
(3S,4aS,8aS)-2-[(2R,3S)-3-amino-2-hydroxy-4-phenylbutyl]-N-tert-butyldecahydroisoquinoline-3-carb oxamide	136522–17–3
4-[(S)-3-amino-2-oxopyrrolidin-1-yl)benzonitrile hydrochloride	175873–08–2
Ethyl3-(3-{(S)-1-[4-(N′2-hydroxyamidino)phenyl]-2-oxopyrrolidin-3-yl}ureido)propionate	175873–10–6
4-[5-(p-tolyl)-3-(trifluoromethyl)-1H-pyrazol-1-yl]benzenesulfonamide	169590–42–5
4-hydrazonobenzenesulfonamide hydrocholoride	17852–52–7
4′-amidinosuccinanilic acid hydrochloride	149177–92–4
Ethyl (S)-3-aminopent-4-ynoate hydrochloride	154772–45–9
11-alpha-hydroxy-7-alpha-(methoxycarbonyl)-3-oxopregn-4-ene-21,17-alpha-carbolactone	192704–56–6
11-alpha-hydroxy-3-oxopregna-4,6-diene-21,17-alpha-carbolactone	73726–56–4
4-(5-methyl-3-phenylisoxazol-4-yl)benzenesulfonamide	181695–72–7
5-methyl-3,4-diphenyl-4,5-dihydroisoxazol-5-ol	181696–73–1

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
N-[4-(5-methyl-3-phenylisoxazol-4-yl)phenylsulfonyl]propionamide, sodium salt	198470–85–8
Pivaloyloxymethyl 7-{(Z)-2-[2-(tert-butoxycarbonylamino)thiazol 4-yl]pent-2-enamido}-3-(carbamoyloxymethyl)-3-cephem-4-carboxylate	105889–80–3
Benzhydryl 6-(4-methylbenzamido)penicillanic acid 4-oxide	77887–68–4
Benzhydryl 7-{(Z)-2-[2-(tert-butoxycarbonylamino)thiazol-4-yl]-4-(3-methylbut-2-enyloxycarbonyl)but-2-enamido}-3-cephem-4-carboxylate	174761–17–2
N-(2-quinolylcarbonyl)-L-asparagine	136465–98–0
Methyl N-(methoxycarbonyl)-L-phenylalaninate	41844–71–7
N-[(2,6-diisopropylphenoxy)sulfonyl]-2-(2,4,6-triisopropylphenyl)acetamide	166518–60–1
(2S,3S)-3-methyl-2-(3-oxo-2,3-dihydro-1,2-benzisothiazol-2-yl)valeric acid	177785–47–6
(1S,4R)-1-azabicyclo[2.2.1]heptan-3-one O-[(Z)-(3-methoxyphenyl)ethynyl]oxime—maleic acid (1:1)	180050–34–4
N-[(R)-9-methyl-4-oxo-1-phenyl-3,4,6,7-tetrahydro[1,4]diazepino[6,7,1-hi]indol-3-yl]isonicotinamide	179024–48–7
4-acetamido-2′-aminobenzanilide	112522–64–2
N,N′-bis[3-(ethylamino)propyl]propane-1,3-diamine tetrahydrochloride	156886–85–0
Ethyl 5-(but-3-enyl)thiophene-2-carboxylate	208337–82–0
Ethyl 5-[(3R)-3,4-dihydroxybutyl]thiophene-2-carboxylate	208337–83–1
Ethyl 5-[(3R)-4-amino-3-hydroxybutyl]thiophene-2-carboxylate	208337–84–2
Ethyl 5-[(3R)-4-(tert-butoxycarbonylamino)-3-hydroxybutyl]thiophene-2-carboxylate	186521–38–0
Ethyl 5-[(3R)-4-(tert-butoxycarbonylamino)-3-(mesyloxy)butyl]thiophene-2-carboxylate	186521–39–1
Ethyl 5-[(3S)-3-(acetylthio)-4-(tert-butoxycarbonylamino)butyl]thiophene-2-carboxylate	186521–40–4
Dimethyl 2-[(S)-1-(tert-butoxycarbonylaminomethyl)-2-(5-ethoxycarbonyl-2-thienyl)propylthio] malonate	186521–41–5
Methyl (S)-6-{2-[5-ethoxycarbonyl)-2-thienyl]ethyl}-3-oxo-1,4-thiazinane-2-carboxylate	186521–42–6
Ethyl (6S)-5-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl] thiophene-2-carboxylate	186521–44–8
(6S)-5-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]thiophene-2-carboxylic acid	186521–45–9
Diethyl N-{5-[2-((6S)-2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl) ethyl]-2-thenoyl}-L-glutamate	177575–19–8
4-chloropyridine hydrochloride	7379–35–3
4-phenoxypyridine	4783–86–2
4-(4-pyridyloxy)benzenesulfonic acid	192329–80–9
4-(4-pyridyloxy)benzenesulfonyl chloride hydrochloride	192330–49–7
(3S)-2,2-dimethyl-1,4-thiazinane-3-carboxylic acid	84915–43–5
(3S)-2,2-dimethyl-4-[4-(4-pyridyloxy)phenylsulfonyl]-1,4-thiazinane-3-carboxylic acid	192329–83–2
2-amino-5-bromo-6-methylquinazolin-4(1H)-one	147149–89–1
3-acetoxy-o-toluic acid	168899–58–9
(4R,5R)-4,5-bis(mesyloxymethyl)-1,3,2-dioxathiolane 2,2-dioxide	208338–09–4
(2R,3R)-1,4-bis(mesyloxy)butane-2,3-diol	1947–62–2
3,7,11-trimethyldodeca-1,6,10-trien-3-ol	7212–44–4
(6E,10E,14E)-3,7,11,15-tetramethylhexadeca-1,6,10,14-tetraen-3-ol	1113–21–9
Methyl 4-amino-5-nitro-o-anisate	59338–84–0
Methyl 5-(ethylsulfonyl)-o-anisate	62140–67–4
Methyl 5-sulfamoyl-o-anisate	33045–52–2
3-methoxy-5-sulfamoyl-o-anisic acid	66644–80–2
1-benzylpiperidine-4-carbaldehyde	22065–85–6
{(E)-3-[(6R,7R)-7-amino-2-carboxylato-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-en-3-yl]allyl} (carbamoylmethyl)(ethyl)methylammonium	160115–08–2
[4-(3-methoxypropoxy)-3-methyl-2-pyridyl]methanol	118175–10–3
(Z)-2-(5-amino-1,2,4-thiadiazol-3-yl)-2-[(fluoromethoxy)imino]acetic acid	116833–10–4
2-(ethylmethylamino)acetamide	116833–20–6
4-chloro-2-[(Z)-(methoxycarbonyl)methoxyimino]-3-oxobutyric acid	84080–70–6
2-(5-ethyl-2-pyridyl)ethanol	5223–06–3
2-(4-aminophenoxymethyl)-2,5,7,8-tetramethyl-4-oxochroman-6-yl acetate	107188–37–4
Chloromethyl pivalate	18997–19–8
7-ethyl-3-[2-(trimethylsilyloxy)ethyl]indole	185453–89–8
5-amino-2,4,6-triiodoisophthalic acid	35453–19–1
4-hydroxyindole	2380–94–1
Thiazolidine-2,4-dione	2295–31–0
2-bromo-3-methylthiophene	14282–76–9
5-methyluracil	65–71–4
Thymidine	50–89–5
3-methyl-4-(2,2,2-trifluoroethoxy)-2-pyridylmethanol	103577–66–8
3-(cyanoimino)-3-piperidinopropiononitrile	56488–00–7
N-acetyl-3-(3,4-dimethoxyphenyl)-DL-alanine	27313–65–1
2,5,7,8-tetramethyl-2-(4-nitrophenoxymethyl)-4-oxochroman-6-yl acetate	107188–34–1
Methyl 4-(bromomethyl)-m-anisate	70264–94–7
9-bromononyl 4,4,5,5,5-pentafluoropentyl sulfide	148757–89–5
2-(phenylthio)aniline	1134–94–7
4,4,5,5,5-pentafluoropentan-1-ol	148043–73–6
Methyl (S)-2-amino-4-(1H-tetrazol-5-yl)butyrate	127105–49–1
(3-chloro-4-fluorophenyl)[7-methoxy-6-(3-morpholinopropoxy)quinazolin-4-yl]amine	184475–35–2
5-hydroxy-1,2,3,4-tetrahydro-1-naphthone	28315–93–7
(R)-1-chloro-2,3-epoxypropane	51594–55–9
Methyl 4-acetamido-o-anisate	4093–29–2
4-acetamido-5-chloro-o-anisic acid	24201–13–6

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
Methyl (1S,2S)-1-benzyl-3-chloro-2-hydroxypropylcarbamate	176972–62–6
Ethyl 2-chloronicotinate	1452–94–4
Ethyl 6-chloronicotinate	49608–01–7
6-hydroxynicotinic acid	5006–66–6
6-chloronicotinic acid	5326–23–8
1-acetylpiperazine	13889–98–0
8-azaspiro[4.5]decane-7,9-dione	1075–89–4
(S)-2-(4-{[(2,7-dimethyl-4-oxo-1,4-dihydroquinazolin-6-yl)methyl](prop-2-ynyl)amino}-2-fluorobenzamido)-4-(1H-tetrazol-5-yl)butyric acid	153537–73–6
SC–59735	116638–33–6
SC–70935	193700–51–5
6,7-dichloro-2,3-dimethoxyquinoxalin-5-ylamine	178619–89–1
4-(2-methyl-1H-imidazo[4,5-c]pyridin-1-yl)benzoic acid	132026–12–1
Methyl(4′-nitrophenethyl)amine hydrochloride	166943–39–1
2-chloroethyl 4-nitrophenyl ether	3383–72–0
(2RS,3SR)-2-(2,4-difluorophenyl)-3-(5-fluoropyrimidin-4-yl)-1-(1H–1,2,4-triazol-1-yl)butan-2-ol—(1R,4S)-2-oxobornane-10-sulfonic acid (1:1)	188416–34–4
6-ethyl-5-fluoropyrimidin-4(1H)-one	137234–87–8
Diphenyl[(S)-pyrrolidin-3-yl]acetonitrile hydrobromide	194602–27–2
(2,3-dihydrobenzofuran-5-yl)acetic acid	69999–16–2
Cyclohexylammonium 1-[(S)-2-(tert-butoxycarbonyl)-3-(2-methoxyethoxy)propyl]cyclopentanecarboxylate	167944–94–7
Cis-4-(benzyloxycarbonyl)cyclohexylammonium tosylate	67299–45–0
5-bromo-3-[(R)-1-methylpyrrolidin-2-ylmethyl]indole	143322–57–0
Meso-3-benzyl-6-nitro-3-azabicyclo[3.1.0]hexane	151860–16–1
Diethyl (6-chloro-9H-carbazol-2-yl)methylmalonate	71208–55–4
Beta-cyclodextrin sulfobutyl ethers, sodium salts	182410–00–0
N-(2-chloroethyl)pyrrolidine hydrochloride	7250–67–1
6,7-bis(2-methoxyethoxy)quinazolin-4(1H)-one	179688–29–0
Ethyl 3,4-dihydroxybenzoate	3943–89–3
3-{(Z)-1-[4-(2-dimethylaminoethoxy)phenyl]-2-phenylbut-1-enyl}phenol	83647–29–4
2-[1-(tert-butoxycarbonyl)-4-piperidyl]acetic acid	157688–46–5
4-pyridylacetic acid hydrochloride	6622–91–9
a,a,a-trifluoro-4-nitro-m-toluidine	393–11–3
Methyl 1-(2,3,5-tri-O-acetyl-beta-D-ribofuranosyl)-1H-1,2,4-triazole-3-carboxylate	39925–10–5
N′a-(tert-butoxycarbonyl)-N′w-nitro-L-arginine	2188–18–3
N′a-(tert-butoxycarbonyl)-N-methoxy-N-methyl-N′w-nitro-L-argininamide	139976–34–4
(2S,3S)-3-amino-2-ethoxy-N-nitropiperidine-1-carboxamidine hydrochloride	180250–77–5
(S)-O-benzyllactaldehyde-N-(tert-butoxycarbonyl)hydrazone	192802–28–1
Phenyl {4-[4-(4-hydroxyphenyl)piperazin-1-yl]phenyl}carbamate	184177–81–9
[(3S,5S)-5-(2,4-difluorophenyl)-5-(1H-1,2,4-triazol-1-ylmethyl)tetrahydrofuran-3-yl]methyl 4-chlorobenzenesulfonate	175712–02–4
8-chloro-11-(4-piperidylidene)-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridine	100643–71–8
2-hydroxy-2-methyl-4′-nitro-3′-(trifluoromethyl)propionanilide	52806–53–8
5-acetylsalicylamide	40187–51–7
8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-one	31251–41–9
1-nitro-4-(1,2,2,2-tetrachloroethyl)benzene	4714–32–3
3-chloropropyldimethylammonium chloride	5407–04–5
3-(trichlorovinyl)aniline hydrochloride	81972–27–2
2-[1-(mercaptomethyl)cyclopropyl]acetic acid	162515–68–6
3-(4-bromobenzyl)-2-butyl-4-chloro-1H-imidazol-5-ylmethanol	151015–31–6
4-chloro-1-methylpiperidine hydrochloride	5382–23–0
Methyl2-[(S)-3-{(E)-3-[2-(7-chloro-2-quinolyl)vinyl]phenyl}-3-hydroxypropyl]benzoate	181139–72–0
Methyl 2-(3-{(E)-3-[2-(7-chloro-2-quinolyl)vinyl]phenyl}-3-oxopropyl)benzoate	149968–11–6
2-(2-trityl-2H-tetrazol-5-yl)phenylboronic acid	143722–25–2
(3aS,8aR)-3-[(2R,4S)-2-benzyl-4,5-epoxyvaleryl]-2,2-dimethyl-3,3a,8,8a-tetrahydro-2H -indeno[1,2-d]oxazole	158512–24–4
N-[(4S,6S)-6-methyl-7,7-dioxo-5,6-dihydro-4H-thieno[2,3-b]thiopyran-4-yl]acetamide	147086–83–7
N-[(4S,6S)-6-methyl-7,7-dioxo-2-sulfamoyl-5,6-dihydro-4H-thieno[2,3-b]thiopyran-4-yl] acetamide	147200–03–1
5-iodouracil	696–07–1
N′1-methyl-1H-pyrazole-1-carboxamidine hydrochloride	59194–35–3
(S)-tetrahydrofuran-3-ol	86087–23–2
Ethyl 4,6-dichloro-3-formylindole-2-carboxylate	153435–96–2
3-oxoandrost-4-ene-17-beta-carboxylic acid	302–97–6
alpha,alpha,alpha,alpha′,alpha′,alpha′-hexafluoro-2,5-xylidine	328–93–8
(±)-2-azabicyclo[2.2.1]hept-5-en-3-one	61865–48–3
(1R,4S)-2-azabicyclo[2.2.1]hept-5-en-3-one	79200–56–9
[(1S,4R)-4-(2-amino-6-chloro-9H-purin-9-yl)cyclopent-2-enyl]methanol hydrochloride	172015–79–1
N-(2-amino-4,6-dichloropyrimidin-5-yl)formamide	171887–03–9
4-fluorobenzyl 4-(methylthio)phenyl ketone	87483–29–2
2-amino-3-pyridyl methyl ketone	65326–33–2
6-methoxy-1H-purin-2-ylamine	20535–83–5
1-(beta-D-arabinofuranosyl)pyrimidine-2,4(1H,3H)-dione	3083–77–0
(2R)-4-methyl-2-[(S)-2,2-dimethyl-5-oxo-1,3-dioxolan-4-yl]valeric acid	157518–70–2
(S)-2-amino-3,3-dimethyl-N–2-pyridylbutyramide	171764–07–1

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
3-nitro-4-pyridone	5435–54–1
2,6-difluorobenzylamine	69385–30–4
L-ribose	24259–59–4
(5,6-dichloro-1H-benzimidazol-2-yl)isopropylamine	176161–55–0
(R)-2-amino-2-ethylhexan-1-ol	151851–75–1
3-methylenecyclobutanecarbonitrile	15760–35–7
4-tert-butylbenzyl 2-{(2R,3S)-3-[(R)-1-(tert-butyldimethylsilyloxy)ethyl]-2-[(1R,3S)-3-methoxy-2-oxocyclohexyl]-4-oxoazetidin-1-yl}-2-oxoacetate	159593–17–6
methyl (3aR,4R,7aR)-2-methyl-4-[(1S,2R)-1,2,3-triacetoxypropyl]-3a,7a-dihydro-4H-pyrano [3,4-d]oxazole-6-carboxylate	78850–37–0
(4S,5R,6R)-5-acetamido-4-amino-6-[(1R,2R)-1,2,3-trihydroxypropyl]-5,6-dihydropyran-2 -carboxylic acid	130525–62–1
Pyrazole-1-carboxamidine hydrochloride	4023–02–3
2-acetoxy-5-acetylbenzyl acetate	24085–06–1
(R)-1,2,3,4-tetrahydropapaverine hydrochloride	54417–53–7
Trans-2-chloro-3-[4-(4-chlorophenyl)cyclohexyl]-1,4-naphthoquinone	153977–22–1
1,3-dichloroacetone	534–07–6
3,5-dimethylpiperidine	35794–11–7
2,6-diaminopyrimidin-4-ol	56–06–4
1-(2-chloroethyl)piperidinium chloride	2008–75–5
Diethyl L-glutamate hydrochloride	1118–89–4
Tert-butyl (1R,4S)-4-(hydroxymethyl)cyclopent-2-enylcarbamate	168960–18–7
2-butyl-1,3-diazaspiro[4.4]non-1-en-4-one hydrochloride	151257–01–1
Tert-butyl 2-{[1-(2-aminothiazol-4-yl)-2-(benzisothiazol-2-ylthio)-2-oxoethylidene] aminooxy}-2-methylpropionate	89604–92–2
Bis[(isopropyloxycarbonyloxy)methyl [(R)-2-(6-amino-9H-purin-9-yl) -1-methylethoxy]methyl phosphonate—fumaric acid (1:1)	202138–50–9
(R)-[2-(6-amino-9H-purin-9-yl)-1-methylethoxy]methylphosphonic acid	147127–20–6
(R)-propylene carbonate	16606–55–6
6-amino-9H-purin-9-ylethanol	707–99–3
(R)-2-(6-amino-9H-purin-9-yl)-1-methylethanol	14047–28–0
Chloromethyl isopropyl carbonate	35180–01–9
Diethyl (tosyloxy)methylphosphonate	31618–90–3
(R)-3-chloropropane-1,2-diol	57090–45–6
(S)-[(trityloxy)methyl]oxirane	129940–50–7
(S)-2-(2-amino-5-chlorophenyl)-4-cyclopropyl-1,1,1-trifluorobut-3-yn-2-ol	154598–58–0
10,10-bis[(2-fluoro-4-pyridyl)methyl]anthrone	160588–45–4
(S)-N-{(1S,2R)-3-[(1,3-benzodioxol-5-ylsulfonyl)(isobutyl)amino]-1-benzyl-2-hydroxypropyl}-3,3-dim ethyl-2-(sarcosylamino)butyramide	183556–68–5
(4R,5S,6S,7R)-1-[(3-amino-1H-indazol-5-yl)methyl]-4,7-dibenzyl-3-butyl-5,6-dihydroxyhexahydro-2H-1,3-diazepin-2-one	188978–02–1
(2S)-N-[(R)-1-(1,3-benzodioxol-5-yl)butyl]-3,3-diethyl-2-{4-[(4-methylpiperazin-1-yl) carbonyl]phenoxy}-4-oxoazetidine-1-carboxamide	157341–41–8
2-(piperazin-1-yl)pyrimidine	20980–22–7
4-bromo-2,2-diphenylbutanenitrile	39186–58–8
Bromomethylcyclopropane	7051–34–5
Cyclobutanecarboxylic acid	3721–95–7
2-phenyl-2-pyridylacetonitrile	5005–36–7
5-methyl-2,3,4,5-tetrahydro-1H-pyrido[4,3-b]indol-1-one	122852–75–9
4-(2-methyl-2-phenylhydrazino)-5,6-dihydro-2-pyridone	139122–76–2
4,5,6,7-tetrahydrothieno[3,2-c]pyridine hydrochloride	28783–41–7
Methyl 2-(2-chlorophenyl)-2-(4,5,6,7-tetrahydrothieno[3,2-c]pyridin-5-yl)acetate hydrochloride	130209–90–4
2-bromo-2-(2-chlorophenyl)acetic acid	141109–25–3
Disodium (2S,3R)-2-hydroxy-3-isobutylsuccinate	157604–22–3
7-amino-3-(2-furoylthiomethyl)-3-cephem-4-carboxylic acid	80370–59–8
Methyl 5-chloro-o-anisate	33924–48–0
4-[(4-mesylamino)phenyl]-4-oxobutyric acid	100632–57–3
Benzyl (3-fluoro-4-morpholinophenyl)carbamate	168828–81–7
(3R)-3-[(S)-1-(methylamino)ethyl]pyrrolidine	155322–92–2
(4-carboxybutyl)triphenylphosphonium bromide	17814–85–6
(3aS,9aS,9bR)-3a-methyl-6-[2-(2,5,5-trimethyl-1,3-dioxan-2-yl)ethyl]-1,2,4,5,8,9,9a,9b-octahydro-3aH-cyclopenta[a]naphthalene-3,7-dione	88128–61–4
2-amino-2′,5-dichlorobenzophenone	2958–36–3
21-chloro-16-alpha-methylpregna-1,4,9(11)-triene-3,20-dione	151265–34–8
3,20-dioxopregna-1,4,9(11),16-tetraen-21-yl acetate	37413–91–5
Uracil	66–22–8
Tetrabutylammonium (6-iodo-1H-purin-2-yl)amide	156126–48–6
(1S,2S,3S)-2,3-bis(benzoyloxymethyl)cyclobutanol	132294–17–8
5-methyluridine	1463–10–1
Benzyl (1-carbamoyl-2-hydroxypropyl)carbamate	91558–42–8
5,8-dihydro-1-naphthol	27673–48–9
Potassium (R)-N-(3-ethoxy-1-methyl-3-oxoprop-1-enyl)-2-phenylglycine	961–69–3
Triethylaniline	33881–72–0
1-[4-(2-dimethylaminoethoxy)[14C]phenyl)]-1,2-diphenylbutan-1-ol	82407–94–1
o-chlorothiophenol	6320–03–2
Cytidine 5′-(dihydrogen phosphate)	63–37–6
2-[benzyl(methyl)amino]ethyl acetoacetate	54527–65–0

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
2-methyl-1-nitrosoindoline	85440–79–5
Inosine 5′-disodium phosphate	4691–65–0
4-[1-hydroxy-2-(methylamino)ethyl]phenol—L-tartaric acid (2:1)	16589–24–5
4-phenylpiperidin-4-ol	40807–61–2
1-(4-benzyloxyphenyl)-2-(4-hydroxy-4-phenyl-1-piperidyl)propan-1-one	188591–61–9
7-chloro-2-(4-methoxy-2-methylphenyl)-2,3-dihydro-5H-pyridazino[4,5-b]quinoline-1,4,10-trione, sodium salt	170142–29–7
N′-[N-methoxycarbonyl-L-valyl]-N-[(S)-3,3,3-trifluoro-1-isopropyl-2-oxopropyl]-L-prolinamide	182073–77–4
3-methyl hydrogen 7-chloro-1,4-dihydro-4-oxoquinoline-2,3-dicarboxylate	170143–39–2
(S)-N-{5-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl} -2-thenoyl]-L-glutamic acid	177575–17–6
(S)-2,2-dimethyl-N-hydroxy-4-[4-(4-pyridyloxy)phenylsulfonyl]-1,4-thiazinane-3 -carboxamide	192329–42–3
urate oxidase	9002–12–4
(Z)-1-[3-(3-chloro-4-cyclohexylphenyl)prop-2-enyl]hexahydro-1H-azepine hydrochloride	139592–99–7
(Z)-N-[3-(3-chloro-4-cyclohexylphenyl)prop-2-enyl]-N-ethylcyclohexylamine hydrochloride	132173–07–0
Trans-2′-fluoro-4-hydroxychalcone O-[(Z)-2-(dimethylamino)ethyl]oxime—fumaric acid (2:1)	130580–02–8
N′,N′-diethyl-2-methyl-N-(6-phenyl-5-propylpyridazin-3-yl)propane-1,2-diamine—fumaric acid (2:3)	137733–33–6
2-{[1-(7-chloro-4-quinolyl)-5-(2,6-dimethoxyphenyl)-1H-pyrazol-3-yl]carbonylamino} adamantane-2-carboxylic acid	146362–70–1
(S)-N-[4-(4-acetamido-4-phenyl-1-piperidyl)-2-(3,4-dichlorophenyl)butyl]-N-methylbenzamide—fumaric acid (1:1)	176381–97–8
N′-{(2R,3S)-5-chloro-3-(2-chlorophenyl)-1-[(3,4-dimethoxyphenyl)sulfonyl]-3-hydroxy-2,3-dihydro-1H-indol-2-ylcarbonyl}-L-prolinamide	150375–75–0
1-(6-chloro-2-pyridyl)-4-piperidylamine hydrochloride	77145–61–0
Ethyl ((7S)-7-{[(2R)-2-(3-chlorophenyl)-2-hydroxyethyl]amino}-5,6,7,8-tetrahydro-2 -naphthyloxy)acetate hydrochloride	121524–09–2
Methyl O–2-deoxy-6-O-sulfo-2-(sulfoamino)-alpha-D-glucopyranosyl-(1,4)-O-beta-D -glucopyranuronosyl-(1,4)-O–2-deoxy-3,6-di-O-sulfo-2-(sulfoamino)-alpha-D -glucopyranosyl-(1,4)-O–2-O-sulfo-alpha-L-idopyranuronosyl-(1,4)-2-deoxy -2-(sulfoamino)-6-(hydrogen sulfate)-alpha-D-glucopyranoside, decasodium salt	114870–03–0
3-{[4-(4-amidinophenyl)thiazol-2-yl][1-(carboxymethyl)-4-piperidyl]amino}propionic acid	180144–61–0
Ethyl 3-({4-[4-(N-ethoxycarbonylamidino)phenyl]thiazol-2-yl}[1-(ethoxycarbonylmethyl)-4 -piperidyl]amino)propionate	190841–79–3
(S)-1-{2-[3-(3,4-dichlorophenyl)-1-(3-isopropoxyphenacyl)-3-piperidyl]ethyl}-4-phenyl-1 -azoniabicyclo[2.2.2]octane chloride	153050–21–6
5-(4-chlorophenyl)-1-(2,4-dichlorophenyl)-4-methyl-N-piperidino-1H-pyrazole-3 -carboxamide	168273–06–1
(R)-N-(1-{3-[1-benzoyl-3-(3,4-dichlorophenyl)-3-piperidyl]propyl}-4-phenyl-4-piperidyl)-N-methylace tamide hydrochloride	173050–51–6
Dibenzyl 1-(2,4-difluorophenyl)-2-(1H–1,2,4-triazol-1-yl)-1-(1H–1,2,4-triazol-1-ylmethyl)ethyl phosphate	194602–25–0
(S)-2-{3-[(2-fluorobenzyl)sulfonylamino]-2-oxo-2,3-dihydro-1-pyridyl}-N-(1-formyl-4 -guanidinobutyl)acetamide	179524–67–5
4-[4-(4-{4-[(3R,5R)-5-(2,4-difluorophenyl)-5-(1H–1,2,4-triazol-1-ylmethyl)tetrahydrofuran-3-ylmethyl oxy]phenyl}piperazin-1-yl)phenyl]-1-[(1S,2S)-1-ethyl-2-hydroxypropyl]-1,2,4-triazol-5(4H)-one	171228–49–2
4-{4-[(11R)-3,10-dibromo-8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-yl]piperid inocarbonylmethyl}piperidine-1-carboxamide	193275–84–2
4-{4-[(11S)-3,10-dibromo-8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-yl]piperidi nocarbonylmethyl}piperidine-1-carboxamide	193275–85–3
N-(1-ethyl-1,4-diphenylbut-3-enyl)cyclopropanecarboxamide	137246–21–0
(±)-1-azabicyclo[2.2.1]heptan-3-ol	142034–92–2
([illegible])-1-azabicyclo[2.2.1]heptan-3-one	21472–89–9
Ethyl[3-(4-bromo-2-fluorobenzyl)-7-chloro-2,4-dioxo-1,2,3,4-tetrahydroquinazolin-1-yl] acetate	112733–28–5
2,6-diisopropylphenyl sulfamate	92050–02–7
Diethyl (1-cyano-3-methylbutyl)malonate	186038–82–4
2-imino-1,3-thiazol-4-one	556–90–1
3,5-di-tert-butyl-4-hydroxybenzaldehyde	1620–98–0
N-(biphenyl-2-yl)-4-[(2-methyl-4,5-dihydro-1H-imidazo[4,5-d][1]benzazepin-6-yl)carbonyl]benzamide	179528–39–3
3-(aminomethyl)-5-methylhexanoic acid	128013–69–4
2-(2,4,6-triisopropylphenyl)acetic acid	4276–85–1
N,N′-[dithiobis(o-phenylenecarbonyl)]bis-L-isoleucine	182149–25–3
(1R,4S)-1-azabicyclo[2.2.1]heptan-3-one	142034–97–7
3-amino-7-methyl-5-phenyl-1H–1,4-benzodiazepin-2(3H)-one	70890–50–5
1-ethyl-1,4-diphenylbut-3-enylamine	129140–12–1
Sodium 1,2,3-triazole-5-thiolate	59032–27–8
(3-ethynylphenyl)[6,7-bis(2-methoxyethoxy)quinazolin-4-yl]amine hydrochloride	183319–69–9
1-[(1S,2S)-2-hydroxy-2-(4-hydroxyphenyl)-1-methylethyl]-4-phenylpiperidin-4-ol methanesulfonate trihydrate	189894–57–3
(5R,6S)-6-phenyl-5-[4-(2-pyrrolidinoethoxy)phenyl]-5,6,7,8-tetrahydro-2-naphthol—(−)-tartaric acid (1:1)	190791–29–8
1-[(S)-3-(acetylthio)-2-methylpropionyl]-L-proline	64838–55–7
4′-benzyloxy-2-[(1-methyl-2-phenoxyethyl)amino]propiophenone hydrochloride	35205–50–6
5-(3-dimethylaminopropyl)-10,11-dihydrodibenzo[a,d]cyclohepten-5-ol	1159–03–1
2-aminoethyldiethylamine	100–36–7
Isopropyl (Z)-7-[(1R,2R,3R,5S)-3,5-dihydroxy-2-{(E)-(3R)-3-hydroxy-4-[3-(trifluoromethyl)phenoxy] but-1-enyl}cyclopentyl]hept-5-enoate	157283–68–6
21-benzyloxy-9-alpha-fluoro-11-beta,17-alpha-dihydroxy-16-alpha-methylpregna-1,4-diene-3,20-dione	150587–07–8
Pilocarpine	92–13–7
Atropine	51–55–8
4-nitrobenzyl (4R,5R,6S)-3-(diphenoxyphosphoryloxy)-6-[(R)-1-hydroxyethyl]-4-methyl-7-oxo-1-azabicyclo[3.2.0]hept-2-ene-2-carboxylate	90776–59–3
2-aminopropane-1,3-diol	534–03–2
Methyl 4-(bromomethyl)benzoate	2417–72–3
2-butylimidazole-5-carbaldehyde	68282–49–5
Ethyl hydrogen (2-thienylmethyl)malonate	143468–96–6
4-(2-butyl-5-formylimidazol-1-ylmethyl)benzoic acid	152146–59–3

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
2,6-dichloro-4-methylnicotinonitrile	875–35–4
3,5-diacetamido-2,4,6-triiodobenzoic acid dihydrate	50978–11–5
2,2,2-trifluoroethanol	75–89–8
13-ethyl-17-alpha-hydroxy-18,19-dinorpregn-4-en-20-yn-3-one oxime	53016–31–2
Estropipate	7280–37–7
4-(4-cyclohexyl-2-methyloxazol-5-yl)-2-fluorobenzenesulfonamide	180200–68–4
17-alpha-hydroxy-3,20-dioxopregna-4,9(11)-diene-21-yl acetate	7753–60–8
Hemocyanins, megathura crenulata, reaction products with 1-O-[O–2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-(N-acetyl-alpha-neuraminosyl)-(2,3)]-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranose	195993–11–4
1-(28-{O-D-apio-beta-D-furanosyl-(1,3)-O-beta-D-xylopyranosyl-(1,4)O-6-deoxy-alpha-L-mannopyranosyl)-(1,2)-4-O-[5-(5-alpha-L-arabinofuranosyloxy-3-hydroxy-6-methyloctanoyloxy)-3-hydroxy-6-methyloctanoyl]-6-deoxy-beta-D-galactopyranosyloxy}-16-alpha-hydr ox	141256–04–4
1-O-[O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-[O-beta-D-galactopyranosyl-(1,3)-2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)]-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyra nosyl]ceramide	104443–62–1
1-O-[O–2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranosyl]ceramide	104443–57–4
N-{[(1R,2R)-1-[O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranosyloxymethyl]-2-hydroxy-3-formylpropyl}stearamide	196085–62–8
Ferristene	155773–56–1
Codeine phosphate hemihydrate	41444–62–6
Trans-1-benzoyl-4-phenyl-L-proline	120851–71–0
5-methyluridine hemihydrate	25954–21–6
5′-benzoyl-2′,3′-didehydro-3′-deoxythymidine	122567–97–9
3′,5′-anhydrothymidine	38313–48–3
4′-(benzyloxycarbonyl)-4′-demethylepipodophyllotoxin	23363–33–9
2,3,4,6-tetra-O-benzyl-1-O-(trimethylsilyl)-b-D-glucose	80312–55–6
2,3,4,6-tetra-O-benzyl-D-glucose	4132–28–9
6-iodo-1H-purin-2-ylamine	19690–23–4
(1R,2R,3S)-2-amino-9-[2,3-bis(benzoyloxymethyl)cyclobutyl]-9H-purin-6-one	156126–53–3
(1RS,2RS,3SR)-2,3-bis(benzoyloxymethyl)cyclobutylamine	151807–53–3
(1RS,2RS,3RS)-2,3-bis(benzoyloxymethyl)cyclobutanol	127759–90–4
(1R,2R,3S)-9-[2,3-bis(benzoyloxymethyl)cyclobutyl]-6-iodo-9H-purin-2-ylamine	156126–89–3
(2S,3S)-2,3-bis(benzoyloxymethyl)cyclobutanone	132294–16–7
(S)-5-(1,3-dioxolan-4-yl)-2-aminovaleric acid	170242–34–9
N,N′-bis(trifluoroacetyl)-DL-homocystine	105996–54–1
(S)-2-(acetylthio)-3-phenylpropionic acid—dicyclohexylamine (1:1)	157521–26–1
Methyl (4S,7S,10aS)-4-amino-5-oxooctahydro-7H-pyrido[2,1-b][1,3]thiazepine-7-carboxylate	167304–98–5
4′-(2-butyl-4-oxo-1,3-diazaspiro[4.4]non-1-en-3-ylmethyl)biphenyl-2-carbonitrile	138401–24–6
DL-5-(1,2-dithiolan-3-yl)valeramide	3206–73–3
4-(4-methoxyphenyl)butan-2-one	104–20–1
Tetraisopropyl methylenediphosphonate	1660–95–3
(S)-1,2,3,4-tetrahydroisoquinoline-3-carboxylic acid	74163–81–8
(S)-N-tert-butyl-1,2,3,4-tetrahydroisoquinoline-3-carboxamide hydrochloride	149057–17–0
(S)-N-tert-butyl-1,2,3,4-tetrahydroisoquinoline-3-carboxamide sulfate	186537–30–4
(3S)-tetrahydrofuran-3-yl (1S,2R)-3-[(4-aminophenylsulfonyl)(isobutyl)amino]-1-benzyl-2-hydroxypropylcarbamate	161814–49–9
6-benzyl-1-(ethoxymethyl)-5-isopropylpyrimidine-2,4(1H,3H)-dione	149950–60–7
(2R,5S)-4-amino-5-fluoro-1-[2-(hydroxymethyl)-1,3-oxathiolan-5-yl]pyrimidin-2(1H)-one	143491–57–0
3′-azido-2′,3′-dideoxy-5-methylcytidine hydrochloride	108895–45–0
(2R,4R)-4-(2,6-diamino-9H-purin-9-yl)-1,3-dioxolan-2-ylmethanol	145514–04–1
(4R,5S,6S,7R)-1,3-bis(3-aminobenzyl)-4,7-dibenzyl-5,6-dihydroxyhexahydro-2H–1,3-diazepin-2-one dimethanesulfonate	177932–89–7

[FR Doc. 99–1342 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–413]

Certain Rare Earth Magnets and Materials and Articles Containing Same; Notice of Commission Determination Not To Review an Initial Determination Amending the Complaint and the Commission's Notice of Investigation To Add Four Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted the motion of complainants Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co. Ltd. (SSMC) to add four respondents to the investigation.

ADDRESSES: Copies of the nonconfidential version of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 4, 1998, the Commission instituted an investigation based on a complaint filed by Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co. (Sumitomo) of Japan alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain rare-earth magnets and magnetic materials and articles containing the same by reason of infringement of several claims of six U.S. patents, three of which are held by Magnequench and three of which are held by Sumitomo. 63 FR 47319. Eight firms were named as respondents.

On November 18, 1998, Magnequench and Sumitomo filed a motion to amend the complaint and the notice of investigation to add (1) A.R.E., Inc. of 777 Linden St. or 782 Pearl St., Sharon, PA 16146; (2) NEOCO, L.C. of 777 Linden St., Sharon, PA or 3128 Walton Blvd., Suite 197, Rochester Hills, MI 48309; (3) Beijing Jing Ma Permanent Magnetic Factory West Building Number 8, Chaoyang District, Beijing, China; and (4) Xin Huan Technology Development Co., Ltd., No. 8 South 3rd St., Zhong Guan Cun Road, Beijing, China as respondents to the investigation. On December 10, 1998, the ALJ granted complainants' motion, finding that the complainants had demonstrated good cause for adding the named respondents at this time. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42(h) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42(h)).

Issued: January 11, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 99–1349 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–01; Exemption Application No. D–10535, et al.]

Grant of Individual Exemptions; Moody-Day, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Moody-Day, Inc. Profit Sharing Plan (the Plan); Located in Carrollton, Texas; Exemption

[Prohibited Transaction Exemption 99–01; Exemption Application No. D–10535]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of an unimproved three-acre tract of real property located in Austin, Texas (the Property) to Metroport Realty Corporation, an affiliate of Moody-Day, Inc., the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions were satisfied:

(A) the Sale was a one-time transaction for cash;

(B) the Plan received the fair market value of the Property on the date of the Sale;

(C) the Property was appraised by qualified, independent real estate appraisers;

(D) a qualified, independent fiduciary determined that the Sale was in the best interests of the Plan; and

(E) the Plan paid no commissions or other expenses relating to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on November 9, 1998 at 63 FR 60386.

EFFECTIVE DATE: This exemption has an effective date of May 24, 1995.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Toledo Clinic, Inc. Employees 401(k) and Profit Sharing Plan (the T/C Plan); Hart Associates, Inc. Profit Sharing Plan (the H/A Plan); and Midwest Fluid Power Company, Inc. Savings and Profit Sharing Plan and Trust (the M/F Plan, Collectively; the Plans) Located in Toledo, Ohio; Exemption

[Prohibited Transaction Exemption 99–02; Exemption Application Nos. D–10633, D–10634 and D–10635, respectively]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 1, 1998, to: (1) the cash sale of certain shares of preferred stock (the Preferred Stock) issued by TTC Holdings Inc. (TTC), by the individually-directed account of Dr. Edward Orrechio in the T/C Plan, by the individually-directed account of Michael Hart in the H/A Plan, and by the individually-directed account of Larry Peterson in the M/F Plan (collectively, the Accounts) to TTC, a party in interest with respect to the H/A Plan and M/F Plan; and (2) the arrangement for the subsequent purchase of certain shares of common Stock (the Common Stock) issued by TTC by Messrs. Orecchio, Hart and Peterson (collectively; the Participants), in their own name, from TTC pursuant to an agreement with TTC that the purchase was to occur immediately after the sale of the Preferred Stock by the Plans to TTC; provided that the following conditions were met:

1. The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, in their individual capacity, were one-time transactions for cash;

2. The transactions described in (1) above took place on the same business day;

3. The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

4. The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number to the shares of Preferred Stock sold by the Accounts to TTC;

5. A qualified independent fiduciary (the Independent Fiduciary) determined that the transactions described herein were in the best interest and protective of the Accounts at the time of the transactions; and

6. The Independent Fiduciary supervised the transactions; assured that the conditions of this exemption were met; and took whatever actions were necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption is effective as of December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Sprinx Inc. Retirement Plan (the Plan) Located in Grand Prairie, Texas; Exemption

[Prohibited Transaction Exemption 99–03; Exemption Application No. D–10660]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed loan of $90,000 (the Loan) by the Plan to Sprinx, Inc. (the Employer), the sponsor of the Plan; and (2) the guarantee of repayment of the Loan by Harry D. Spring, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

1. The Loan does not exceed 25% of the total assets of the Plan at any time;

2. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

3. The Loan is secured by common stock issued by the Employer, which has a fair market value, as determined by an independent qualified appraiser, which will remain at least 200% of the outstanding principal balance of the Loan throughout its duration;

4. The Plan has a first priority perfected security interest in the Stock, which is properly filed and perfected under applicable state law;

5. The independent fiduciary reviews the terms and conditions of the Loan and determines that the Loan is in the best interest and protective of the Plan and its participants and beneficiaries;

6. The independent fiduciary monitors the Loan throughout its duration and takes whatever action is necessary to protect the interests of the Plan; and

7. The independent fiduciary monitors the parties' compliance with the terms and conditions of this exemption.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 14th day of January, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–1272 Filed 1–20–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for expedited review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by

calling the National Endowment for the Humanities, Assistant Director, Grants Office, Susan G. Daisey (202–606–8494) or may be requested by email to sdaisey@neh.fed.us. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**. 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 above as soon as possible.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond.

Agency: National Endowment for the Humanities.

Title of Proposal: My History is America's History Website.

OMB Number: To be assigned.

Frequency of Collection: Continual.

Affected Public: General Public.

Number of Respondents: Approximately 100,000 per year.

Estimated Time per Respondent: Approximately one hour per response.

Estimated Total Burden Hours: 350,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This submission requests expedited clearance from OMB in thirty days.

FOR FURTHER INFORMATION CONTACT: Ms. Susan G. Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Room 311, Washington, D.C. 20506, or by email to: sdaisey@neh.fed.us. Telephone: 202–606–8494.

Juan Mestas,

Deputy Chairman.

[FR Doc. 99–1314 Filed 1–20–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m., local time on Wednesday, February 17, 1999, at the Hyatt Regency Hotel, 400 SE 2nd Avenue, Miami, Florida 33131–2197 concerning the Fire Aboard Cruise Ship *Ecstasy* on July 20, 1998. For more information, contact Donald Tyrrell, NTSB Office of Marine Safety at (202) 314–6455 or Ted Lopatkiewicz, NTSB Office of Public Affairs at (202) 314–6100.

Dated: January 14, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–1290 Filed 1–20–99; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295/304–LA]

Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2); Notice of Appointment of Adjudicatory Employee

Pursuant to 10 CFR 2.4, notice is hereby given that Mr. Ronald A. Burrows, a Commission employee in the Office of Nuclear Reactor Regulation, Division of Reactor Program Management, has been appointed as a Commission adjudicatory employee within the meaning of section 2.4, to advise the Commission regarding issues related to the pending appeal of LBP–98–27. Mr. Burrows has not previously performed any investigative or litigating function in connection with this or any factually-related proceeding. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Burrows.

It is so *Ordered.*

Dated at Rockville, Maryland, this 14th day of January 1999.

For the Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–1358 Filed 1–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Informal 10 CFR 2.206 Public Hearing

[Docket No. 50–458; License No. NPF–47]
Entergy Operations, Inc.
[Docket No. 50–440; License No. NPF–58]
FirstEnergy Nuclear Operating Company

The U. S. Nuclear Regulatory Commission (NRC) will hold an informal public hearing regarding two petitions submitted pursuant to 10 CFR 2.206 involving the River Bend Station (RBS), operated by Entergy Operations, Incorporated, (the RBS licensee), and Perry Nuclear Power Plant (PNPP), Unit 1, operated by FirstEnergy Nuclear Operating Company (the PNPP licensee). The hearing will be held on February 22, 1999. The location for the hearing will be at the NRC, room T–2B3. The NRC is located at 11545 Rockville Pike, Rockville, Maryland. The hearing will be open to public attendance and will be transcribed.

The structure of the hearing shall be as follows: Monday, February 22, 1999:

1:00 p.m.—NRC opening remarks
1:15 p.m.—Petitioner's presentation
2:00 p.m.—NRC questions
2:15 p.m.—RBS licensee's presentation
2:45 p.m.—NRC questions
3:00 p.m.—PNPP licensee's presentation
3:30 p.m.—NRC questions
3:45 p.m.—Public comments
4:30 p.m.—Licensees/Petitioner's final statements
4:45 p.m.—Meeting concludes

Note: All times are Eastern Standard Time (EST)

By letter dated September 25, 1998, the Union of Concerned Scientists (UCS or Petitioner) submitted a Petition pursuant to 10 CFR 2.206 requesting that the River Bend Station be immediately shut down and its operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested that a public hearing be held to discuss this matter in the Washington, D.C. area.

By letter dated November 9, 1998, the UCS also submitted a Petition pursuant to 10 CFR 2.206 requesting that the Perry Nuclear Power Plant be immediately shut down and its operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested a public hearing in the Washington, D.C. area.

The purpose of this informal public hearing is to obtain additional information from the Petitioner, the licensees, and the public for NRC staff use in evaluating the Petitions. Therefore, this informal public hearing will be limited to information relevant to issues raised in the two Petitions. The staff will not offer any preliminary views on its evaluation of the Petitions. The informal public hearing will be chaired by a senior NRC official who will limit presentations to the above subject.

The format of the informal public hearing will be as follows: opening remarks by the NRC regarding the general 10 CFR 2.206 process, the purpose of informal public hearing, and a brief summary of the Petitions (15 minutes); time for the Petitioner to explain the basis of the Petitions (45 minutes); time for the NRC to ask the Petitioner questions for the purposes of clarification (15 minutes); time for the licensees to address the issues raised in the petition (30 minutes for each licensee); time for the NRC to ask the licensees questions for the purposes of clarification (15 minutes each, following licensees' presentations); time for public comments relative to the Petition (45 minutes); and time for the licensees' and Petitioner's final statements (15 minutes).

Members of the public who are interested in presenting information relative to the Petitions should notify the NRC official named below, 5 working days prior to the hearing. A brief summary of the information to be presented and the time requested should be provided in order to make appropriate arrangements. Time allotted for presentations by members of the public will be determined based upon the number of requests received and will be announced at the beginning of the hearing. The order for public presentations will be determined on a first received—first to speak basis. Written statements should be mailed to the U.S. Nuclear Regulatory Commission, Mailstop O–13H03, Attention: Robert Fretz, Washington, D.C. 20555.

Requests for the opportunity to present information can be made by contacting Robert Fretz, Project Manager, Division of Reactor Projects—III/IV (telephone 301–415–1324) between 7:00 a.m. to 3:30 p.m. (EST), Monday–Friday. Persons planning to attend this informal public hearing are urged to contact the above NRC representative 1 or 2 working days prior to the informal public hearing to be advised of any changes that may have occurred.

In order to assist participation in the informal hearing by interested members of the public, the NRC may also provide video teleconferencing services at a public location in the vicinity of the River Bend and Perry facilities. A subsequent notice in the **Federal Register** will be published at least 10 days prior to the date of the informal public hearing to announce the location of the video conferencing site, if made available.

Dated at Rockville, Maryland, this 14th day of January 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1359 Filed 1–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company (Big Rock Point Nuclear Plant); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–6, issued to Consumers Energy Company (Consumers or the licensee) for the possession of the Big Rock Point Nuclear Plant (BRP) located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would reduce or remove selected physical security requirements of 10 CFR part 73.

The proposed action is in accordance with the licensee's application dated November 12, 1998.

Need for the Proposed Action

On June 26, 1997, Consumers certified that it would permanently cease reactor power operations at its BRP facility. On August 30, 1997, the reactor was shut down. By letter dated September 23, 1997, the licensee certified the permanent removal of all fuel from the reactor vessel. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications, Facility Operating License No. DPR–6 no longer authorizes operation of the reactor or emplacement or retention of the fuel in the reactor vessel. In this permanently shutdown and defueled condition, the facility poses a reduced risk to public health and safety.

The proposed action is required to allow the licensee to implement physical security plans appropriate to the permanently shutdown and defueled condition of the BRP facility.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the granting of the exemption from selected portions of 10 CFR part 73 is acceptable, as described in the safety evaluation accompanying issuance of the exemption.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. Further, the ''no-action'' alternative would require Consumers to maintain and implement physical security plans required of an operating reactor plant. Such a plan would represent a burden on the licensee and not enhance the protection of the environment. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in BRP's Environmental Report for Decommissioning, dated February 27, 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on December 29, 1998, the staff consulted with the Michigan State official, Robert D. Skowronek, Acting Chief Radiological Protection Section, Drinking Water and Radiological Protection Division, Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed exemption, see the licensee's letter dated November 12, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room, North Central Michigan College Library, 1515 Howard Street, Petoskey, MI 49770.

Dated at Rockville, Maryland, this 13th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1360 Filed 1–20–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23652; File No. 812–11396]

Hartford Life and Annuity Insurance Company, et al.; Notice of Application

January 13, 1999.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities, and pursuant to Section 17(b) of the Act exempting related transactions from Section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of Bond Fund of One Group Investment Trust (''One Group Trust'') for shares of Pegasus Variable Fund (''Pegasus Trust'') Bond Fund, shares of One Group Trust's Value Growth Fund for shares of Pegasus Variable Fund's Growth and Value Fund, shares of One Group Trust's Mid Cap Opportunities Fund for shares of Pegasus Trust's Mid Cap Opportunity Fund, shares of One Group Trust's Large Company Growth Fund for shares of Pegasus Trust's Growth Fund and shares of One Group Trust's Mid Cap Value Fund for shares of Pegasus Trust's Intrinsic Value Fund currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

Applicants: Hartford Life and Annuity Insurance Company (''Hartford''), ICMG Registered Variable Life Separate Account One (''ICMG Account'') and Hartford Life and Annuity Insurance Company Separate Account Six (''Annuity Account,'' together with the ICMG Account, the ''Accounts'').

Filing date: The application was filed on November 10, 1998.

Hearing or notification of hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 8, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Marianne O'Doherty, Esq., Counsel, Hartford Life and Annuity Insurance Company, 200 Hopmeadow Street, Simsbury, Connecticut 06089. Copies to Stephen E. Roth, Esq. and David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Hartford is a stock life insurance company incorporated in Connecticut. Hartford is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states but New York. Hartford is the depositor and sponsor of the Accounts.

2. The ICMG Account, a segregated investment account established under Connecticut law, is registered with the Commission as a unit investment trust. The ICMG Account is currently divided into fourteen subaccounts, each of which invests exclusively in shares representing an interest in a separate corresponding investment portfolio (''Fund'') of one of three management investment companies of the series type (''Management Companies''), including Pegasus Trust. The assets of the ICMG Account support flexible premium group variable life insurance contracts (''ICMG Contracts''), and interests in the Account offered through the ICMG Contracts have been registered under the Securities Act of 1933 (the ''1933 Act'') on Form S–6.

3. The Annuity Account is currently divided into thirteen subaccounts. Each subaccount invests exclusively in a corresponding Fund of one of the same three Management Companies in which the ICMG Account invests. The assets of the Annuity Account support individual and group flexible premium deferred variable annuity contracts (''Annuity Contracts,'' together with the ICMG Contracts, ''Contracts''), and interests in the Account offered through the Annuity Contracts have been registered under the 1933 Act on Form N–4 (File No. 33–86330).

4. Pegasus Trust, a Delaware business trust, is registered under the Act as an open-end management investment company (File No. 811–8854). Pegasus Trust currently comprises five Funds, all of which would be involved in the proposed substitutions. Pegasus Trust issues a separate series of shares of beneficial interest in connection with each Fund. Those shares are registered under the 1933 Act on Form N–1A (File

No. 33–86186). First Chicago NBD Investment Management Company serves as the investment adviser to Pegasus Trust.

5. One Group Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company (File No. 811–7874). One Group Trust currently comprises nine Funds. One Group Trust issues a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A (File No. 33–66080). Banc One Investment Advisors Corporation serves as investment adviser to One Group Trust.

6. Pegasus Trust's Bond Fund (''Pegasus Bond Fund'') seeks to maximize its total rate of return by investing predominantly in intermediate and long-term debt securities denominated in U.S. dollars. During normal market conditions, the Fund's average weighted portfolio maturity is generally 6 to 12 years. Debt securities in which the Pegasus Bond Fund normally invests include: (a) obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities; (b) corporate, bank and commercial obligations; (c) securities issued or guaranteed by foreign governments and their agencies or instrumentalities; (d) securities issued by supranational banks; (e) mortgage-backed and other asset-backed securities; and (f) variable rate bonds, zero coupon bonds, debentures and various types of demand instruments. Up to 15% of the Pegasus Bond Fund's total assets may be invested in dollar-denominated debt securities of foreign issuers.

7. One Group Trust's Bond Fund (''One Group Bond Fund'') seeks to earn a high level of current income and total return by investing primarily in a diversified portfolio of debt securities of various maturities. At least 65% of the One Group Bond Fund's total assets is invested in bonds and at least 80% in debt securities of all types with varying maturities. Generally debt securities acquired by the One Group Bond Fund are rated investment grade but it may invest up to 5% of its net assets in debt securities rated below investment grade. It also may invest in convertible securities, preferred stock and loan participations. The One Group Bond Fund normally maintains a weighted average maturity of between six to twelve years, although it may shorten this maturity for temporary defensive purposes.

8. Pegasus Trust's Growth and Value Fund (''Pegasus Growth and Value Fund'') seeks long-term capital growth, with income a secondary consideration. It invests primarily in equity securities of larger companies believed by its investment adviser to represent a value or potential worth that is not fully recognized by prevailing market prices. It invests in equity securities of companies that its investment adviser believes have earnings growth expectations that exceed those implied by the market's current valuation or whose earnings it expects to increase at a rate in excess of those within the general equity market.

9. One Group Trust's Value Growth Fund (''One Group Value Growth Fund'') seeks long-term capital growth and growth of income and secondarily, a moderate level of current income, by investing primarily in equity securities. It invests in securities of overlooked or undervalued companies that have the potential to produce above-average earnings growth over time. It follows a multi-style strategy in that it invests in securities of both value and growth oriented companies of varying levels of capitalization.

10. Pegasus Trust's Mid Cap Opportunity Fund (''Pegasus Mid Cap Opportunity Fund'') seeks long-term capital appreciation. It seeks to achieve its objective by investing primarily in equity securities of companies with market capitalizations of $500 million to $3 billion.

11. One Group Trust's Mid Cap Opportunities Fund (''One Group Mid Cap Opportunities Fund'') seeks long term capital growth by investing primarily in equity securities of companies with market capitalizations of between $500 million and $5 billion. Normally the One Group Mid Cap Opportunities Fund invests at least 80% of its total assets in common and preferred stock, rights, warrants, securities convertible into common stock, and other equity securities. The One Group Mid Cap Opportunities Fund may invest up to 25% of its total assets in equity securities of foreign issuers and up to 20% of its total assets in investment grade debt securities, U.S. government securities, cash and cash equivalents. It may hold up to 5% of its total assets in convertible debt securities rated lower than investment grade.

12. Pegasus Trust's Growth Fund (''Pegasus Growth Fund'') seeks long-term capital appreciation. It seeks to achieve its objective by investing primarily in equity securities of domestic issuers believed by its investment adviser to have above-average growth characteristics. The investment adviser often considers the following factors in evaluating growth characteristics: development of new or improved products, a favorable growth outlook for the issuer's industry, patterns of increasing sales and earnings, the probability of increased operating efficiencies, and cyclical conditions.

13. One Group Trust's Large Company Growth Fund (''One Group Large Company Growth Fund'') seeks long-term capital appreciation and growth of income by investing primarily in equity securities of large well-established companies. The weighted average market capitalization of such companies normally exceeds the median market capitalization of the Standard & Poor's 500 Composite Stock Price Index. The One Group Large Company Growth Fund normally invests at least 65% of its total assets in such equity securities. The remainder of the One Group Large Company Growth Fund's total assets are invested in nonconvertible fixed-income securities, options and futures contracts, repurchase agreements, and securities issued by the U.S. government and its agencies and instrumentalities.

14. Pegasus Trust's Intrinsic Value Fund (''Pegasus Intrinsic Value Fund'') seeks long-term capital appreciation. It seeks to achieve its objective by investing primarily in equity securities of companies that its investment adviser believes represent a value or potential worth that is not recognized by prevailing market prices. In selecting securities, the Fund's investment adviser employs screening techniques to isolate issues that it believes are attractively priced and then evaluates the underlying earning power and dividend paying ability of the issuer. The Fund's holdings are usually characterized by lower price/earnings, price/cash flow and price/book value ratios and by above-average current dividend yields relative to the equity market′.

15. One Group Trust's Mid Cap Value Fund (''One Group Mid Cap Value Fund'') seeks capital appreciation with a secondary goal of obtaining income by investing primarily in equity securities. Under normal market conditions, at least 80% of the One Group Mid Cap Value Fund's total assets are invested in equity securities having market capitalizations of $500 million to $5 billion. Generally, the One Group Mid Cap Value Fund invests in equity securities of companies with below-average price/earnings and price/book value ratios. The One Group Mid Cap Value Fund also considers a company's financial soundness and earnings prospects. It generally will sell a security if its investment adviser considers that the issuer's fundamental

business prospects are declining or its ability to pay dividends is impaired.

16. Banc One Investment Advisors Corporation, investment adviser to One Group Trust, is an indirect wholly-owned subsidiary of Bank One Corporation. Until recently, First Chicago NBD Investment Management, investment adviser to Pegasus Trust, was an indirect wholly-owned subsidiary of First Chicago NBD Corporation. As of October 2, 1998, Bank One Corporation and First Chicago NBD Corporation underwent a merger and have decided to consolidate the mutual fund operations of First Chicago NBD Investment Management with those of Banc One Investment Advisors. Applicants assert that in connection with this consolidation, it has been determined that the organization needs only one Management Company as an investment vehicle for variable life insurance and variable annuity contracts and that One Group Trust rather than Pegasus Trust should be that vehicle. As a result, Pegasus Trust will be closed down and will therefore be unable to continue to offer its shares to the Accounts.

17. Under the Contracts, Hartford reserves the right to substitute shares of one Fund for shares of another, including a Fund of a different Management Company.

18. Hartford proposes to substitute shares of the One Group Bond Fund for shares of the Pegasus Bond Fund, shares of the One Group Value Growth Fund for shares of the Pegasus Growth and Value Fund, shares of the One Group Mid Cap Opportunities Fund for shares of the Pegasus Mid Cap Opportunity Fund, shares of the One Group Large Company Growth Fund for shares of the Pegasus Growth Fund and shares of the One Group Mid Cap Value Fund for shares of the Pegasus Intrinsic Value Fund (collectively, ''Substitutions''). Hartford proposes to carry out certain substitutions by redeeming shares issued by Pegasus Trust in kind and using the redemption proceeds to purchase shares issued by One Group Trust.

19. With respect to the proposed substitution of shares of One Group Bond Fund for shares of Pegasus Bond Fund, shares of One Group Mid Cap Opportunities Fund for shares of Pegasus Mid Cap Opportunity Fund, shares of One Group Value Growth Fund for shares of Pegasus Growth and Value Fund and shares of One Group Mid Cap Value Fund for shares of Pegasus Intrinsic Value Fund, Applicants assert that in anticipation of Pegasus Trust's discontinuation, One Group Trust is in the process of creating new investment portfolios including the Bond Fund, Mid Cap Opportunities Fund, Value Growth Fund and Mid Cap Value Fund. Each of these Funds has been designed as a replacement for its Pegasus Trust counterpart. As such, each has an investment objective (or objectives) that is virtually or substantially identical to that of its Pegasus Trust counterpart and pursues such objective(s) using similar investment polices. The effect of the foregoing four proposed substitutions would be to ''transfer'' these Pegasus Trust Funds intact to the One Group Trust. Banc One Investment Advisors has indicated to Hartford that it has undertaken to waive the management fee of these four One Group Trust Funds during their first year of operation to the extent necessary to limit each Fund's expense ratio as follows: Bond Fund, 0.75%; Mid Cap Opportunities Fund, 0.95%; Value Growth Fund, 0.95%; and Mid Cap Value Fund, 0.95%.

20. With respect to the proposed substitution of shares of One Group Large Company Growth Fund for shares of Pegasus Growth Fund, Applicants assert that One Group Large Company Growth Fund has substantially the same investment objective as the Pegasus Growth Fund. If the proposed substitution of One Group Large Company Growth Fund shares for those of Pegasus Growth Fund occurs, Large Company Growth Fund would increase in size by approximately 15% and be more than seven times the size of the Growth Fund. This proposed substitution would move Contract owners currently invested in Pegasus Trust Growth Fund to a much larger fund with substantially the same risk and reward characteristics. Applicants assert that although Pegasus Growth Fund has had somewhat lower expense ratios than One Group Trust Large Company Growth Fund during the last three years, the immediate increase in size of the later after the proposed substitution would result in a lower ratio in fiscal 1999 and that One Group Large Company Growth Fund has had better cumulative performance over the past three fiscal years than has Pegasus Growth Fund.

21. The following charts show the approximate year-end net asset level, ratio of operating expenses as a percentage of average net assets, and annual total returns for each of the past three years for the Pegasus Growth Fund and the One Group Large Company Growth Fund:

	Net assets at year-end	Expense ratio (percent)	Total return (percent)
Pegasus Growth Fund:			
1995	$6,434,936	[2].85	[2]18.82
1996	11,542,021	.85	17.52
1997	15,839,911	.91	24.48
One Group Large Company Growth Fund:			
1995	16,119,036	[1].90	24.13
1996	42,893,346	[1].98	16.67
1997	99,627,641	[1]1.00	31.93

[1] The One Group Trust Large Company Growth Fund's investment adviser voluntarily waived part of its investment management fee during 1995 and 1996 in order to limit the Fund's expense ratios to the amounts shown for those years. Absent such waivers, the expense ratios for 1995 and 1996 would have been 1.64% and 1.16%, respectively.

[2] Annualized.

22. By supplements to the various prospectuses for the Contracts and the Accounts, Hartford will notify all owners of the Contracts of its intention to effect the Substitutions. The supplements for the Accounts advise Contract owners that from the date of the supplement until the date of the Substitutions, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected subaccounts on the date of the supplement to another subaccount available under a Contract other than one of the other affected subaccounts without that transfer counting as a ''free'' transfer permitted under a Contract. The supplements also inform Contract owners that Hartford will not exercise any rights reserved under any Contract to impose additional

restrictions on transfers until at least 30 days after the proposed substitution.

23. The Substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value, cash value or death benefit or in the dollar value of his or her investment in either of the Accounts. Contract owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or Hartford's obligations under the Contracts be altered in any way. All expenses incurred in connection with the Substitutions, including legal, accounting and other fees and expenses, will be paid by Hartford. In addition, the Substitutions will not impose any tax liability on Contract owners. The Substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitutions than before the Substitutions. The Substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Hartford will not exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the Substitutions.

24. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the Substitutions, any Contract owners who were affected by the Substitutions will be sent a written notice informing them that the Substitutions were carried out and that they may make one transfer of all Contract value or cash value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount or separate account available under their Contract without that transfer counting as one of any limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that Hartford will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers until at least 30 days after the Substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contract owners who are affected by the Substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by Hartford (or one of its affiliates) during the 60 days following the Substitutions. The notices will be accompanied by current prospectuses for One Group Trust.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states:

It shall be unlawful for any depositor or trustee or a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the Substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the Substitutions.

3. The Contracts expressly reserve for Hartford the right, subject to Commission approval, to substitute shares of another Management Company for shares of a Management Company held by a subaccount of the Accounts. Applicants assert that the prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

4. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by Hartford. Applicants assert that the Substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants assert that in the cases of the proposed substitution of shares of One Group Bond Fund for shares of Pegasus Bond Fund, shares of One Group Mid Cap Opportunities Fund for shares of Pegasus Mid Cap Opportunity Fund, shares of One Group Value Growth Fund for shares of Pegasus Growth and Value Fund and shares of One Group Mid Cap Value Fund for shares of Pegasus Intrinsic Value Fund, the Pegasus Trust Funds would be replaced by essentially the same Fund under a different name. Although these Funds, in their One Group Trust incarnation, may not be managed by the same individuals as managed them for Pegasus Trust, each Fund will maintain its essential character along with its investment objective(s) and policies. Moreover, applicants assert that these Funds' prospects for significant future growth are greater as part of the One Group Trust than they would have been as part of Pegasus Trust.

6. Applicants assert that in the case of the proposed substitution of shares of One Group Trust Large Company Growth Fund for shares of Pegasus Trust Growth Fund, Pegasus Trust Growth Fund would be replaced by a Fund with very similar investment objectives and policies, but of much larger size. Although expense ratios over the most recent three fiscal years have been somewhat lower for Pegasus Growth Fund than for One Group Trust Large Company Growth Fund, cumulative investment performance for the later has been better than for the former over the same periods and investors in Large Company Growth Fund can reasonably expect a decline in expense ratios as result of the increase in assets following the proposed substitution. For these reasons, Applicants assert that Contract owners would benefit from the proposed substitution.

7. Applicants assert that they anticipate that Contract owners will be at least as well off with the array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the substitutions. Applicants assert that the Substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the Substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among the same number of subaccounts as they could before the Substitutions.

8. Applicants assert that each of the Substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract or cash values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants assert that the Substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

9. Section 17(a)(1) of the Act prohibits any affiliated person or an affiliate of an

affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

10. Section 17(b) of the Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

11. Applicants request an order pursuant to Section 17(b) of the Act exempting them, Pegasus Trust and One Group Trust from the provisions of Section 17(a) to the extent necessary to permit Hartford to carry out the Substitutions.

12. Applicants assert that the terms of the Substitutions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also assert that the proposed substitutions by Hartford are consistent with the policies of: (a) Pegasus Trust and of its Bond Fund, Growth and Value Fund, Mid Cap Opportunity Fund, Growth Fund and Intrinsic Value Fund; and (b) One Group Trust and of its Bond Fund, Value Growth Fund, Mid Cap Opportunities Fund, Large Company Growth Fund and Mid Cap Value Fund, as recited in the current registration statements and reports filed by each under the Act. Finally, Applicants assert that the proposed substitutions are consistent with the general purposes of the Act.

13. The proposed transactions will be effected at the respective net asset value. The proposed transactions will not change the amount of any Contract owner's Contract or cash value or death benefit or in the dollar value of his or her investment in either of the Accounts. Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a–7. Applicants assert that to the extent that the proposed transactions do not comply fully with all of the conditions of Rule 17a–7 and each Trust's procedures thereunder, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Fund of Pegasus Trust and the affected Funds of One Group Trust from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business.

14. Applicants assert that because of the circumstances surrounding the proposed Hartford substitutions, Pegasus Trust could not ''dump'' undesirable securities on One Group Trust or have their desirable securities transferred to other advisory clients of Banc One Investment Advisers or to Funds other than those in One Group Trust supporting the Accounts. Nor can Hartford (or any of its affiliates) effect the proposed transactions at a price that is disadvantageous to any Pegasus Trust Fund or One Group Trust Fund. Although the transactions may not be entirely for cash, each will be effected based upon: (a) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7; and (b) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in the respective Trust's registration statement and as required by Rule 22c–1 under the Act. Applicants assert that no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, Applicants assert that the boards of trustees of each Trust will subsequently review the Substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

15. Applicants assert that the proposed transactions are consistent with the general purposes of the Act and that the proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the Substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division Of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1322 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23649; 812–11342]

Templeton Dragon Fund, Inc.; Notice of Application

January 13, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicant, Templeton Dragon Fund, Inc. (the ''Fund''), a registered closed-end management investment company, requests an order to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for quarterly distributions of a fixed percentage of its net asset value (''NAV'').

FILING DATES: The application was filed on October 7, 1998, and amended on January 11, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 8, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Applicant, 500 East Broward Boulevard, Suite 2100, Fort Lauderdale, Florida 33394–3091.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the

Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Fund is registered under the Act as a closed-end management investment company and organized as a Maryland corporation. The Fund's investment objective is to seek long-term capital appreciation by investing at least 45% of its total assets in "China companies," as defined in the Fund's prospectus. Shares of the Fund are listed on the New York Stock Exchange and the Osaka Stock Exchange. Templeton Asset Management Ltd.—Hong Kong branch is the fund's investment adviser and is registered under the Investment Advisers Act of 1940.

2. On July 22, 1998, the fund's board of directors ("Board"), including a majority of the independent directors, adopted a distribution plan with respect to applicant's common stock under which the Fund will make quarterly distributions to its shareholders in an amount equal to 2.5% of the Fund's NAV, determined as the Friday prior to the declaration date ("Distribution Policy"). The Board concluded that adoption of the Distribution Policy would be in the best interests of the Fund's shareholders and could help reduce the discount from NAV at which applicant's shares generally have traded. Applicant requests relief to permit it to make up to four distributions of net long-term capital gains in one taxable year, so long as the Fund maintains in effect the Distribution Policy.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions that the Fund may make with respect to any one year, would prevent the normal operation of its Distribution Policy whenever applicant's realized net long-term gains in any year exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. As a result, applicant states that it must fund these quarterly distributions with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to cover quarterly distributions). Applicant further asserts that the long-term capital gains in excess of the fixed quarterly distributions permitted by rule 19b–1 then must either be added to one of the permitted capital gains distributions, thus exceeding the total minimum amount called for by the Distribution Policy, or be retained by the applicant, with the applicant paying taxes on the amount retained. Applicant believes that the application of rule 19b–1 to its Distribution Policy may create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include such gains.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of the concerns leading to the adoption of the rule was that shareholders might not be able to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicant states that it will fully describe the Distribution Policy, including that quarterly distributions called for by the Distribution Policy will include returns of capital to the extent that applicant's net investment income and net long-term realized capital gains are insufficient to meet the fixed dividends, in periodic communications. The Fund has described to shareholders the Distribution Policy in the Fund's most recent proxy material and shareholder report. In accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (net investment company taxable income, net long-term realized capital gain or return of capital) will accompany each distribution (or the confirmation of the reinvestment thereof under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each distribution during the year will be included with the applicant's annual tax information reporting distributions for that year and sent to each shareholder who received distributions during the year, including shareholders who have sold shares during the year.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper sales practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend ("selling the dividend"), when the dividend would result in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as applicant, that do not continuously distribute shares. Applicant further asserts that if it makes a rights offering to its shareholders, the rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the six week period immediately following the record date for the declaration of a dividend. Thus, the abuse of selling the dividend could not occur as a matter of timing. Applicant further states that any offering by applicant of transferable rights will comply with all Commission and staff guidelines concerning such offering. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any such offering by applicant of transferable rights will also comply with any applicable NASD rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, or any rule thereunder, if such 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. For the reasons stated above, applicant believes that the requested exemption meets the standards set forth in section 6(c) of the Act.

Applicant's Condition

The Fund agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its shares other than:

(i) a rights offering with respect to the Fund's common stock to holders of the Fund's common stock, in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising the rights will not be entitled to receive such dividend, and (c) the Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Fund, unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1326 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40946; File No. SR–NSCC–98–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Testing

January 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 29, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 8, 1999, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, NSCC will require certain NSCC members to participate in the Security Industry Association's (SIA) Year 2000 test beginning in March 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, NSCC 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 test of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's Rule 15 provides, ''The Corporation shall establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership.'' In connection with this standard, NSCC has determined that members who utilize Equity, Fixed Income, or Mutual Funds services and who settle transactions through NSCC must validate their Year 2000 readiness through participation in the SIA Year 2000 test beginning in March 1999. NSCC considers the SIA test appropriate to confirm Year 2000 readiness of its critical members because NSCC's products and services will be represented in this industry-wide effort.

As a prerequisite to participation in the SIA test, members are required to perform connectivity and point-to-point testing with NSCC. NSCC members are required to contact NSCC by January 15, 1999, to establish a date to perform such prerequisite testing.

On an exception basis, NSCC members subject to this testing mandate may be represented in the SIA test by their service bureau. To qualify for this exception (on a per service basis), the member must obtain prior approval from NSCC and meet all of the following three conditions: (1) the member cannot rely upon a direct connection into NSCC (specifically, their input and output must be handled by a service bureau); (2) the member's volume must not be in the top 90% of the volume of all firms who utilize the service by either dollar or transaction count measurements; and (3) the member cannot represent a processing arrangement with the service bureau that is unique to that member. Members subject to the testing mandate who may be represented in the SIA test by their service bureau will be notified by NSCC by January 29, 1999, that they fall within this exception category.

At the conclusion of the SIA test, all members subject to the testing mandate will be required to provide NSCC with written confirmation, in a format proscribed by NSCC, that test files have been received from NSCC and successfully processed in a Year 2000 compliant manner.[3]

Members who fail to complete prerequisite testing with NSCC prior to the March 1999 SIA test as well as members who are required to participate in the SIA test but fail to do so will be subject to appropriate disciplinary action in accordance with NSCC's rules. Such disciplinary action permits NSCC to limit or restrict a member's access to NSCC. In addition, NSCC could require a member to clear trades through another entity.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[4], which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC advised members of its Year 2000 testing requirements in presentations and in an Important Notice, dated September 1, 1998. No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the required prerequisite and SIA Year 2000 testing should allow NSCC to address potential problems associated with its critical members' Year 2000 readiness. As a result, NSCC should be able to continue

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] NSCC will inform members by Important Notice as to the form in which they must provide written confirmation to NSCC regarding test results.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1(b)(3)(F).

to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

NSCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow NSCC to implement its mandatory Year 2000 testing program in a timely manner.

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, 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 NSCC. All submissions should refer to the File No. SR–NSCC–98–15 and should be submitted by February 11, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–98–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1325 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40944; File No. SR–NYSE–98–35]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Specifications and Content Outline for the Trading Assistant Qualification Examination (Series 25)

January 13, 1999.

I. Introduction

On November 10, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of the specifications of the new trading assistant exam and the Content Outline for the Trading Assistant Qualification Examination (''Series 25 Content Outline''). The proposed rule change was published for comment in the **Federal Register** on December 9, 1998.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In a companion release, the Exchange has proposed to amend Rule 35 which dictates the terms under which an employee of a member or member organization may be admitted to the Exchange trading floor.[4] The Rule 35 Proposal requires floor employees *i.e.*, post clerks and booth clerks, also known as trading assistants (''Trading Assistants'') to take and pass an appropriate qualification examination (''Series 25 Examination'') and to meet appropriate training requirements. Currently, Rule 35 only requires trading assistants to submit a completed Form U–4 (''Uniform Application for Securities Industry Registration or Transfer'') and fingerprints. The current requirements will continue to be effective.

Under the Rule 35 Proposal, all current and prospective Trading Assistants will be required to pass the Series 25 Examination. Moreover, new Trading Assistants will be required to attend a 3-month training session (including on-the-job and classroom training) before taking the exam. New Trading Assistants will not be permitted to perform their functions without supervision until they pass the exam. Current Trading Assistants will have one year from implementation of the new requirements to pass the exam and will not be required to attend the 3-month training unless they twice fail the Series 25 Examination.

The Exchange, in conjunction with the amendments to Rule 35, filed this proposal to submit its Series 25 Content Outline. The Series 25 and the Series 25 Content Outline were developed by the Exchange along with a committee of Exchange members and Trading Assistants. The Exchange believes the Series 25 will ensure that Trading Assistants will have the basic knowledge, skills, and abilities necessary to perform the functions and carry out the responsibilities of their position. The Series 25 Content Outline details the coverage of the examination. According to the Series 25 Content Outline, it is intended to familiarize examination candidates with the range of subjects covered, as well as the depth of knowledge required.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[6]

Section 6(c)(3)(B) of the Act provides, among other things, that a national securities exchange may examine and verify the qualifications of applicants who desire to become associated with a member and may require any person associated with a member to be registered with the exchange in accordance with established procedures. This section also provides that an exchange may bar a person from becoming a member if such person does not meet standards of training, experience, and competence as are prescribed by the rules of the exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40721 (November 30, 1998), 63 FR 67965 (December 9, 1998.

[4] Securities Exchange Act Release No. 40720 (November 30, 1998), 63 FR 67969 (December 9, 1998) (''Rule 35 Proposal'').

[5] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(c)(3)(B).

Having reviewed the Series 25 Examination itself in its entirety,[7] the Commission finds that the Series 25 Examination satisfies the requirements of Section 6(c)(3)(B).[8] The Commission believes that the nature and the scope of the examination is appropriate for ensuring that Trading Assistants admitted to the Exchange's trading floor are duly trained and qualified to competently perform their duties and functions.

The Commission also finds that the Series 25 Content Outline satisfies the requirements of Section 6(c)(3)(B) of the Act.[9] The Commission believes that the Series 25 Content Outline provides notice to all members and persons associated with members of the requirements to be satisfied by floor employees before they can be admitted to the Exchange trading floor. Moreover, the series 25 Content Outline also provides Trading Assistants with notice of the topics and materials tested as well as sample test questions to help them prepare.

The proposed rule change should help ensure that floor employees, working on the Exchange trading floor, are qualified and competent. It is therefore consistent with Section 6(c)(3)(B) because it establishes procedures of the Exchange that ensure that the standards regarding training, experience, and competence are satisfied.

Moreover, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[10] which provides, among other things, that the rules of the Exchange be designed, in general, to protect investors and the public interest. The new exam should ensure that the Trading Assistants admitted to the Exchange trading floor are qualified to effectively perform in their positions. By ensuring the qualifications and abilities of trading assistants, the Commission believes that the integrity of the Exchange is maintained, which should protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–98–35) is approved.

[7] The Series 25 Examination was subject to confidential treatment by the Commission.

[8] Securities Exchange Act Release No. 40943 (January 13, 1999).

[9] 15 U.S.C. 78f(c)(3)(B).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1323 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40943; File No. SR–NYSE–98–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc. Order Approving Proposed Rule Change To Amend Rule 35 (''Floor Employees To Be Registered'') and Adopt a New Interpretation to Rule 35

January 13, 1999.

I. Introduction

On October 22, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 35 and add a new interpretation with respect to the administration of proposed Rule 35. The proposed rule change was published for comment in the **Federal Register** on December 9, 1998.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange is proposing to amend Rule 35 to require floor employees of members and member organizations to satisfy prescribed training and successfully complete a qualification examination before being admitted to the Exchange trading floor. The proposed rule change also provides a new interpretation to Rule 35 to implement the qualification examination requirements for floor employees.

Currently, floor employees *i.e.,* post clerks and booth clerks, also known as trading assistants (''Trading Assistants'') are only required to submit a completed Form U–4 (''Uniform Application for Securities Industry Registration or Transfer'') along with their fingerprints to the Exchange before being admitted to the trading floor. Under proposed Rule 35, Trading Assistants will be required, in addition to the current requirements, to be qualified by taking and passing an appropriate qualification examination and by meeting prescribed training requirements.

The Exchange has been working with a committee of Exchange members and Trading Assistants to develop a new qualification exam, the Trading Assistant Qualification Examination (''Series 25 Examination'').[4] The Exchange believes the Series 25 Examination will ensure that trading assistants have the basic knowledge, skills and abilities necessary to perform the functions and carry out the responsibilities of a trading assistant.

The requirement to take and pass the Series 25 Examination will apply to all current and prospective Trading Assistants. The new interpretation to Rule 35, as proposed, shall require new Trading Assistants to attend three-months of training (including on-the-job and prescribed classroom instruction provided by the Exchange) before taking the exam. New Trading Assistants will not be permitted to perform functions until passing the examination. Current Trading Assistants will have one year to pass the examination [5] and will not be required to complete classroom training. If, however, a current Trading Assistant fails the Series 25 Examination twice, he or she will be required to attend the classroom training before retaking the exam. The NYSE states that it intends to publish this new interpretation as an Interpretation Memorandum for inclusion in the Exchange's *Interpretation Handbook.*

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40720 (November 30, 1998), 63 FR 67969 (December 9, 1998).

[4] The Series 25 Examination itself is the subject of a separate filing. *See* Securities Exchange Act Release No. 40944 (January 13, 1999).

[5] The Exchange plans to implement this proposed rule change on March 15, 1999. Therefore, current Trading Assistants will have until March 15, 2000 to pass the examination. Telephone call between Mary Anne Furlong, Director, Rule and Interpretative Standards, NYSE and Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated January 13, 1999.

[6] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(c)(3)(B).

Section 6(c)(3)(B) of the Act[8] provides, among other things, that a national securities exchange may examine and verify the qualifications of applicants who desire to become associated with a member and may require any person associated with a member to be registered with the exchange in accordance with established procedures. This section also provides that the exchange may bar a person from becoming a member if such person does not meet standards of training, experience, and competence as are prescribed by the rules of the exchange.

The Commission finds that the Series 25 Examination satisfies Section 6(c)(3)(B) because it provides the Exchange with a means to measure a Trading Assistant's ability and qualifications. The Exchange has the responsibility to ensure that its members and persons associated with members meet standards of training, experience, and competence. By requiring all current and potential Trading Assistants to pass the Series 25 Examination, the Exchange ensure that the Trading Assistants admitted to the Exchange's trading floor are duly trained and qualified to competently perform their duties and functions.

Moreover, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[9] which provides, among other things, that the rules of the Exchange be designed, in general, to protect investors and the public interest. The proposed rule change ensures that the Trading Assistants admitted to the Exchange trading floor are qualified to effectively perform in their positions. By ensuring the qualifications and abilities of trading assistants, the Commission believes that the integrity of the Exchange is maintained, which should protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–98–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1324 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3151]

State of Florida

Palm Beach and Pasco Counties and the contiguous Counties of Broward, Hendry, Hernando, Hillsborough, Martin, Pinellas, Polk, and Sumter in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on January 2 and 3, 1999. Applications for loans for physical damages from this disaster may be filed until the close of business on March 15, 1999 and for economic injury until the close of business on October 12, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 315106 and for economic injury the number is 9A7200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 12, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–1368 Filed 1–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9A70]

Commonwealth of Massachusetts (and a Contiguous County in the State of New Hampshire)

Middlesex County and the contiguous counties of Essex, Norfolk, Suffolk, and Worcester in the Commonwealth of Massachusetts, and Hillsborough County in the State of New Hampshire constitute an economic injury disaster loan area as a result of a fire that occurred on January 2, 1999 at the Mill Village Shopping Center in Sudbury, Massachusetts. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on Oct. 12, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned for economic injury for this disaster are 9A7000 for Massachusetts and 9A7100 for New Hampshire.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 11, 1999.

Fred Hochberg,

Acting Administrator.

[FR Doc. 99–1367 Filed 1–20–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #2956]

United States International Telecommunication Advisory Committee—Telecommunication Standardization Sector (ITAC–T) National Committee & Study Groups B & D; Notice of Meeting

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee—Telecommunication Standardization Sector (ITAC–T). The purpose of the Committee and its Study Groups is to advise the Department on policy and technical issues with respect to international telecommunication standardization. All meetings will be held at the Department of State, 2201 ''C'' Street, NW, Washington, DC from 9:30 AM to 4:30 PM. The ITAC–T National Committee will meet January 13, 1999. ITAC–T Study Group D will meet on January 14, 1999. ITAC–T Study Group B will meet January 27, 1999.

The National Committee will receive a debrief of the recently completed ITU Plenipotiary Convention and begin preparations for the ITU Telecommunication Sector Advisory Group (TSAG) of the International Telecommunication Union in April 1999.

Study Group D will receive a debrief of the Plenipotiary Convention and Study Group 16 meeting and make preparations for meeting and make preparations for meetings of ITU Study Group 8. Study Group B will receive a debrief of the Plenipotentiary Convention and make preparations for Study Groups 11 and 13.

Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend the meeting should send a fax to (202) 647–5957 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC T and date of meeting), your name, social security number, date of birth, and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license, U.S. passport, U.S. Government identification card. Enter from the ''C'' Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: December 23, 1998.

Marian R. Gordon,

Director, Information Telecommunication Standardization.

[FR Doc. 99–1472 Filed 1–19–99; 3:51 pm]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 11, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No.____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__CMTS@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., January 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29350.

Petitioner: American Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.391(a).

Description of Relief Sought/Disposition: To allow American to reduce the minimum required complement of flight attendants by one during boarding for the purposes of communicating with company personnel.

Dispositions of Petitions

Docket No: 29042.

Petitioner: Schwartz Engineering Company.

Sections of the FAR Affected: 14 CFR 21.183(f) and 25.2(b).

Description of Relief Sought/Disposition: To permit type and airworthiness certification of a Boeing Model 757–200 airplane with adjacent exits further than 60′ apart.

Partial Grant, December 14, 1998, Exemption No. 6710A.

Docket No: 26734.

Petitioner: Sierra Industries, Inc.

Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a) (1) and (2).

Description of Relief Sought/Disposition: To permit certain qualified pilots of its Cessna Citation Model 500 series airplanes equipped with supplemental type certificate to operate those aircraft without a pilot who is designated as second in command.

Grant, January 13, 1999, Exemption No. 5517E.

Docket No: 29156.

Petitioner: Firelands Museum of Military History.

Sections of the FAR Affected: 14 CFR 91.319, 119.5(g), and 119.25(b).

Description of Relief Sought/Disposition: To permit Firelands Museum of Military History to operate its former military UH–1H helicopters, which are certificated in the experimental category, for the purpose of carrying passengers on local flights for compensation or hire.

Partial Grant, January 13, 1999, Exemption No. 6792A.

Docket No: 28807.

Petitioner: Yankee Air Force, Inc.

Sections of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).

Description of Relief Sought/Disposition: .To permit Yankee Air Force to operate its former military Boeing B–17G aircraft, which has a limited category airworthiness certificate, for the purpose of carrying passengers on local flights in return for receiving donations, subject to certain conditions and limitations.

Grant, January 11, 1999, Exemption No. 6631A.

Docket No: 29342.

Petitioner: Airbus Industrie.

Sections of the FAR Affected: 14 CFR 61.77(a).

Description of Relief Sought/Disposition: To permit pilots employed by Airbus to be eligible for special purpose pilot authorizations to ferry newly manufactured U.S.-registered aircraft from France and Germany to the United States for delivery to US Airways, Inc.

Grant, January 13, 1999, Exemption No. 6850.

[FR Doc. 99–1354 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4452 Notice 6]

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for comments and OMB approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** on October 15, 1998, that announced the Research and Special Programs Administration's (RSPA) intention to request renewal of an information collection in support of the Office of Pipeline Safety's (OPS) Recordkeeping for Liquid Natural Gas (LNG) Facilities. No comments were received. RSPA is publishing this additional notice to give the public an additional 30 days to provide comments.

DATES: Comments on this notice must be received on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW Washington, DC 20950, (202) 366–1640 or e-mail marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

*Title: R*ecordkeeping for Liquid Natural Gas (LNG) Facilities.

OMB Number: 2137–0048.

Abstract: 49 U.S.C. 60103, standards for liquefied natural gas pipeline facilities delegates the responsibility for ensuring safe operation of LNG facilities to the Secretary of Transportation. Enforcement regulations are found in 33 CFR 193, Liquefied Natural Gas Facilities: Federal Safety Standards. These regulations require recordkeeping to allow Federal and State inspectors to ensure safe operations and maintenance of LNG facilities.

Estimate of Burden: The average burden hours per response is 120.

Respondents: LNG facility operators.

Estimated Number of Respondents: 95.

Estimated Number of Responses per Respondent: 400.

Estimated Total Annual Burden on Respondents: 11,400 hours.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW Washington, DC. Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 ATTN: Desk Officer for the Department of Transportation.

Issued in Washington, DC on January 14, 1999.

Diane Litman,

Director for Information Resource Management, Office of the Secretary.

[FR Doc. 99–1277 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4452, Notice 4]

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for comments and OMB approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** on October 15, 1998 that announced the Research and Special Program Administration's (RSPA) intention to request a renewal of a currently approved information collection in support of the Office of Pipeline Safety's (OPS) certification and agreement forms for the gas and hazardous liquid pipeline safety program. No comments were received. RSPA is publishing this notice to provide the public an additional 30 days to comment.

DATES: Comments to this notice must be received on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice, or write by e-mail to marvin.fell@rspa.dot.gov.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program.

OMB Approval Number: 2137–0584.

Frequency: Annually.

Use: This collection is used by RSPA to ensure that state agencies with regulatory jurisdiction over pipeline safety have adopted and are complying with minimum Federal safety standards. This information is used to calculate grants to states. These grants are used by states to help fund a significant portion of their state pipeline safety programs.

Estimated Number of Respondents: 62.

Respondents: State Agencies.

Total Annual Hours Requested: 3,678.

Interested persons are invited to send comments regarding the 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.

Comments should be sent to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503.

Issued in Washington, DC on January 14, 1999.

Diane Litman,

Director Information Resource Management, Office of the Secretary.

[FR Doc. 99–1278 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number RSPA–98–4452 Notice 5]

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for comments and OMB approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** on October 15, 1998, that announced the Research and Special

Programs Administration's (RSPA) intention to request a renewal of a currently approved information collection in support of the Office of Pipeline Safety's (OPS) Recordkeeping for Gas Pipeline Operators. RSPA received no comments on that notice. RSPA is publishing an additional notice giving the public an additional 30 days to provide comments.

DATES: Comments on this notice must be received on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–6205, or by e-mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping for Gas Pipeline Operators.

OMB Number: 2137–0049.

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

Abstract: 49 U.S.C. 60117 requires the Secretary of Transportation to determine whether a person transporting gas is complying with Federal safety standards. This statue requires the maintenance of records and reports and the provision of requested information to the Department of Transportation upon request. These records help ascertain compliance and provide information for incident investigation.

Estimate of Burden: The average burden hours per operator is 41.5.

Respondents: Gas pipeline operators.

Estimated Number of Respondents: 22,700.

Estimated Total Annual Burden on Respondents: 940,991.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC.

Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation.

Issued in Washington, DC on January 14, 1999.

Diane Litman,

Director of Information Resource Management, Office of the Secretary.

[FR Doc. 99–1279 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before (30 days after publication).

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 14, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12195–N	RSPA–1998–4938	Custom Metalcraft, Inc., Springfield, MO.	49 CFR 172.203(a), 172.302(c), 173.240–243, 178.705(c) (iv)(A).	To authorize the manufacture, mark and sale, of metal intermediate bulk containers meeting design type UN31A, except for minimum thickness requirements and marking requirements for use in the transportation of certain hazardous materials. (Modes 1, 2, 3.)
12196–N	RSPA–1998–4939	HR Textron Inc., Pacoima, CA.	49 CFR 173.302(a), 178.35, 178.37.	To authorize the manufacture, mark and sale of non-DOT specification stainless steel alloy cylinders to be used for the transportation in commerce of nitrogen or nitrogen mixtures classed as Division 2.2 materials. (Modes 1, 2, 3, 5.)
12197–N	RSPA–1998–4948	Arteva Specialties S.á.r.l./d/b/a/KoSa Spartanburg, SC.	49 CFR 174.67(i)&(j)	To authorize rail cars to remain attached to connectors without the physical presence of an unloader. (Mode 2.)
12198–N	RSPA–1998–4947	Mazda Motor Corporation, Fuchu-Cho, Aki-Gun, Hiroshima, JA.	49 CFR 171–180	To authorize the manufacture, mark, and sale of certain shock absorbers and struts, containing Division 2.2 material for transportation in commerce as accumulators. (Modes 1, 2, 3, 4, 5.)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12199–N	RSPA–1998–4949	Flight International, Newport News, VA.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of Division 1 explosives that are not permitted for shipment by air or are in quantities greater than those prescribed. (Mode 4.)
12203–N	RSPA–1999–4965	Celanese Ltd., Dallas, TX.	49 CFR 177.834(i)(1)(2)(3).	To authorize MC–330 or MC–331 cargo tanks to remain connected when unloading has been temporarily suspended without the physical presence of an unloader. (Mode 1.)

[FR Doc. 99–1320 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before (15 days after publication).

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
8009–M		CP Industries, Inc., McKeesport, PA (See Footnote 1)	8009
10407–M		TN Technologies, Inc., Round Rock, TX (See Footnote 2)	10407
10977–M		Federal Industries Corporation, Plymouth, MN (See Footnote 3)	10977
11380–M		Baker Atlas (a division of Baker Hughes, Inc.), Houston, TX (See Footnote 4)	11380
11381–M		Eco-Pak Specialty Packaging, Elizabethton, TN (See Footnote 5)	11381
11613–M		Solutia, Inc., St. Louis, MO (See Footnote 6)	11613
11916–M	RSPA–1997–2740	CP Industries, Inc., McKeesport, PA (See Footnote 7)	11916
12150–M	RSPA–1998–4529	Midland Manufacturing Corporation, Skokie, IL (See Footnote 8)	12150
12162–M	RSPA–1998–4613	U.S. Department of Defense, Falls Church, VA (See Footnote 9)	12162

(1) To modify the exemption to authorize increased ultrasonic scanning speeds on DOT–3AAX cylinders (trailer tubes) made of 4130X steel, for CNG service, at the time of manufacturing.

(2) To modify the exemption to increase the water capacity of the non-DOT specification, stainless steel, radiation detection device, filled with a Division 2.2, nontoxic gas, from 30 cubic inches to 1000 cubic inches.

(3) To modify the exemption to include polypropylene blankets as a cushioning and absorbent, and a fibre tube to protect the closure for limited quantities of hazardous materials required to be labeled poison, KEEP AWAY FROM FOOD, flammable liquid, flammable solid, corrosive, oxidizer or DANGEROUS WHEN WET.

(4) To modify the exemption to allow for several design changes of the non-DOT specification cylinder for the transportation of certain compressed hydrocarbon gases.

(5) To modify the exemption to allow for a design change to the phenolic foam insulation for DOT Specification 20PF–1, 20PF–2 and 20PF–3 overpacks manufactured in variance with the specification in 49 CFR 178.356 for transportation in commerce when containing uranium hexafluoride, fissile in Type A cylinders.

(6) To modify the exemption to provide for Class 3 as an additional class of material for rail cars that remain connected during entire unloading process without the physical presence of an unloader.

(7) To modify the exemption to alter the Rejection Criteria for isolated pits and line corrosion for DOT–3AX and DOT–3AAX cylinders for the transportation in commerce of 2.1, 2.2 and 2.3 compressed gases.

(8) To reissue the exemption originally issued on an emergency basis to authorize the transportation of DOT specification tank cars meeting all specifications except that they are equipped with combination pressure relief devices that contain a frangible disk constructed of a non-authorized material.

(9) To reissue the exemption originally issued on an emergency basis to use non-DOT specification containers for certain compressed gases.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 14, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 99–1321 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33699]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's rail line, between (1) Kern Junction, CA, in the vicinity of UP's milepost 313.6 (Fresno Subdivision), and Calwa, CA, in the vicinity of UP's milepost 209.1 (Fresno Subdivision); and (2) Los Angeles, CA, in the vicinity of UP's milepost 485.0 (Wilmington Subdivision), and San Jose, CA, in the vicinity of UP's milepost 45.7 (Coast Subdivision). BNSF will operate its own trains with its own crews over UP's line under the trackage rights agreement.[1]

The transaction was scheduled to be consummated on January 12, 1999.

The purpose of the trackage rights is to allow BNSF to operate over an alternate line while BNSF's lines are undergoing maintenance and repair.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33699, 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, one copy of each pleading must be served on Yolanda M. Grimes, Esq., The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1317 Filed 1–20–99; 8:45 am]

BILLING CODE 4915–00–P

[1] On January 5, 1999, BNSF and UP filed a petition for exemption in STB Finance Docket No. 33699 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* wherein BNSF and UP request that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on February 12, 1999. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–22]

Delegation of Authority With Respect to the Purchase of Law Enforcement Vehicles

1. By virtue of the authority vested in the Secretary of the Treasury by section 116 of the Treasury Department Appropriations Act, 1999, as included in Pub. L. 105–277, section 101(h), I hereby delegate to the Assistant Secretary for Management and Chief Financial Officer authority to certify, in consultation with the Under Secretary for Enforcement, that the purchase of law enforcement vehicles by a Treasury bureau is consistent with "the vehicle management principles."

2. *Redelegation.* This authority may not be redelegated.

3. *Sunset Review.* This Order shall be reviewed five years from the date of issuance unless superseded or canceled prior to that date.

Dated: January 12, 1999.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99–1291 Filed 1–20–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Change in State of Incorporation: American Alternative Insurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: *American Alternative Insurance Corporation* has redomesticated from the state of New York to the state of Delaware effective July 31, 1998. The Company was last listed as an acceptable surety on Federal bonds at 63 FR 36082, July 1, 1998.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 revision, on page 36082 to reflect this change.

The Circular may be viewed and downloaded through the Internet http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: January 13, 1999.

Judith R. Tillman,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–1310 Filed 1–20–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: ICI Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36095 to reflect this addition:

ICI MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 102 South Winooski Avenue, Burlington, VT 05402 PHONE: (802) 863–0096. UNDERWRITING LIMITATION b/: $10,249,000. SURETY LICENSES c/: VT. INCORPORATED IN: Vermont.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Service Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: January 13, 1999.

Judith R. Tillman,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–1309 Filed 1–20–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2553

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2553, Election by a Small Business Corporation.

DATES: Written comments should be received on or before March 22, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election by a Small Business Corporation.

OMB Number: 1545–0146.

Form Number: 2553.

Abstract: Form 2553 is filed by a qualifying corporation to elect to be an ''S'' Corporation as defined in Internal Revenue Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an ''S'' Corporation and the corporation's income is taxed to the shareholders of the corporation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses and Farms.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 14 hrs., 5 mins.

Estimated Total Annual Burden Hours: 7,040,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1287 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8849

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before March 22, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: 8849.

Abstract: Internal Revenue Code sections 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: Form 8849 is being extensively revised. The revised form will contain six schedules—five for fuel tax claims and one for other claims. Fuel tax claims that have similar requirements are on the same schedule. In addition the revised form will:

- Allow the claimant to use only the applicable schedules. All claimants must complete the cover page. Only the schedules needed for their claim need to be attached to the cover page.
- Reduce the number of separate statements and attachments required to be prepared by the claimant.
- Reduce the amount of correspondence with the IRS because of incomplete claims.
- Provide entry boxes on the form and schedules to enter the required information. By using the boxes for entries, claimants will have no problem entering the information required, and the IRS will have a greater ability to read the information.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 125,292.

Estimated Time Per Respondent: 14 hr., 45 min.

Estimated Total Annual Burden Hours: 1,847,489.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1288 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–SF

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B).

DATES: Written comments should be received on or before March 22, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

OMB Number: 1545–1394.

Form Number: 1120–SF.

Abstract: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Current Actions: There are no changes being made to Form 1120–SF at this time.

Type of Review: OMB extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 28 hrs., and 8 mins.

Estimated Total Annual Burden Hours: 28,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1289 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 1998.

Last name	First name	Middle name
Arnvig	Kristine	Bourke
Attard	Christopher	Domnick.
Ballou	Robert	Vanhoy.
Barit	Hugh	Edward.
Beracci	Benedetta.	
Bettohja	Emanuella	Myriam.
Brunnstrom	Ulf	Gosta.
Camilleri	Christine	Victoria.
Carr-Harris	Margaret	Weisser.
Chad	Stanley	Robert.
Christensen	Michael	Gordon.
De Sena	Ida.	
Fleming	Carol	Diane.
Groat	Kristian	Rudolph.
Guilloteau	Marie	Therese.
Heem-Li	John	Kwok.
Ho	Victor	Sai-Dai.
Kent	Ida	R.
Knox	Jacqueline	Cariveau.
Knudsen	Walter	Trygve.
Laoughlin	John	Joseph.
Nichols	Peter	Royall.
Parr	Mark	Dennis.
Parr	Mathew	William.
Pillonel	Marc	Christian.
Rinehart	Carol	Ann.
Schmid-Scangas.	Joyce.	
Sijthoff	Margaretha	Johanna-Maria.
Sing Li	Aubrey	Kwokthonm.
Toker	Hidir	Orhan.
Toyama	Takeo.	
Vareedayah	Lawrence.	
Venigalla	Vijaya	Lakshmi.
Vourecas-Petalas.	Atalanta.	
Watari	Kensaku	Pao.
Weiner	Gary	David.

Approved: January 5, 1999.

Doug Rogers,

Chief, Special Projects & Support Branch, International District.

[FR Doc. 99–1286 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Minority Veterans has been renewed for a period beginning January 8, 1999, through December 31, 1999.

Dated: January 11, 1999.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–1313 Filed 1–20–99; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Public Law 96–466, section 1521, will be held on February 2nd through 4th, 1999. The meeting will be held at the Washington Office of the American Legion, 1608 K Street NW, Washington, DC 20006. On February 2nd and 3rd, the meeting will convene at 9:00 a.m. and adjourn at 4:00 p.m. On February 4th, the meeting will convene at 9:00 a.m. and adjourn at 12:00 noon. The purpose of the meeting is to review the quality of the services which the Department of Veterans Affairs provides to disabled veterans who participate in VA sponsored programs of rehabilitation. In addition, the Committee will conduct an internal business meeting focusing on past activities and future initiatives.

On February 2nd, the meeting will begin with opening remarks and an overview by Mr. Ronald W. Drach, Committee Chairman. Mindy Aisen, M.D., Director, Rehabilitation Research and Development Service, will present a progress report on selected rehabilitation research projects, as well as comment on the overall state of rehabilitation research within the Department. Alfonso Batres, Ph.D., Chief Officer, Readjustment Counseling Service, will address the Committee on the history of VA community-based vet centers and their role in the process of veterans' post-war rehabilitation. The afternoon portion will consist of a rehabilitation over-view by Mr. Frederick Downs, Chief Consultant, Prosthetics and Sensory Aids Service. The meeting will conclude with two Committee task-force reviews on the nature of outside service contracting by the Vocational Rehabilitation and Counseling Service and the operative goals which guide the behaviors of that program.

On February 3rd, Mr. Dennis Duffy, Assistant Secretary for Policy and Planning, will provide a presentation on veteran rehabilitation in a ''One-VA'' Environment. Later, Mr. Hershel W. Gober, Deputy Secretary, will give a historical overview of VA's veterans rehabilitation programs. The afternoon session will be devoted in its entirety to a panel discussion conducted by spokespersons from veterans service organizations on the quality of constituent experiences with the Vocational Rehabilitation Program and recommendations for program change.

The February 4th meeting will encompass a review of past unfinished business, recommendations for program changes, and a discussion of future meeting sites and future agenda topics.

All meetings will be open to the general public and statements may be submitted by the general public at the February 4th morning meeting. If additional information is needed, please contact Frank J. Donlan, Counseling Psychologist, Department of Veterans Affairs, at (202) 273–7436.

Dated: January 12, 1999.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–1312 Filed 1–20–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 13

Thursday, January 21, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 77 and 91

[Docket No. 92-076-2]

RIN 0579-AA53

Tuberculosis in Captive Cervids

Correction

In rule document 98–34726 beginning on page 72104 in the issue of December 31, 1998, make the following corrections:

1. On page 72104, in the first column, the CFR heading is corrected to read as set forth above.

2. On the same page, in the same column, in the first line after **EFFECTIVE DATE:**, add ''February 1, 1999.''.

[FR Doc. C8–34726 Filed 1–20–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

Agriculture Marketing Service

7 CFR Part 59

9 CFR Chapter III

[Docket No. 97-045F]

Agency Responsibilities, Organization, and Terminology

Correction

In rule document 98–34358, beginning on page 72352, in the issue of Thursday, December 31, 1998, make the following correction:

On page 72352, in the first column, after the heading **DATES:** insert ''*Effective Date*:''.

[FR Doc. C8–34358 Filed 1-20-99; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

Correction

In rule document 98–34516, beginning on page 16, in the issue of Monday, January 4, 1999, make the following corrections:

1. On page 16, in the first column, under the heading **I. Introduction**, in the second line, ''5a(1)(17)'' should read ''5a(a)(17)''.

§ 1.69 [Corrected]

2. On page 23, in the second column, in § 1.69(a)(8), in the first line, ''8 *(Significant action)*'' should read ''(8) *Significant action*''.

[FR Doc. C8–34516 Filed 1–20–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
January 21, 1999

Part II

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; Genito Urinary Surgeons, Inc., et al.; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10630 thru D–10632, et al.]

Proposed Exemptions; Genito Urinary Surgeons, Inc. Profit Sharing Plan (GUS Plan); Michael J. Rosenberg Money Purchase Pension Plan (Rosenberg Plan); Robert Savage Qualified Retirement Plan (Savage Plan) (Collectively, the Plans)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Genito-Urinary Surgeons, Inc. Profit Sharing Plan (GUS Plan); Michael J. Rosenberg Money Purchase Pension Plan (Rosenberg Plan); Robert Savage Qualified Retirement Plan (Savage Plan) (collectively, the Plans) Located in Toledo, Ohio

[Application Nos. D–10630, D–10631 and D–10632, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the cash sale of certain shares of preferred stock (the Preferred Stock) issued by TTC Holdings Inc. (TTC) to TTC, by the individually-directed account of Dr. Gregor Emmert in the GUS Plan (the Emmert Account), by the individually-directed account of Mr. Michael J. Rosenberg in the Rosenberg Plan (the Rosenberg Account), and by the individually-directed account of Mr. Robert Savage in the Savage Plan (the Savage Account) (collectively, the Accounts); and (2) the subsequent purchase of certain shares of common stock (the Common Stock) issued by TTC by Messrs. Emmert, Rosenberg and Savage (collectively; the Participants), in their own name, from TTC pursuant to an agreement with TTC that the purchase of the Common Stock was to occur immediately after the sale of the Preferred Stock by the Plans; provided that the following conditions were met:

(a) The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, acting in their individual capacity, were one-time transactions for cash;

(b) The transactions described in (a) above took place on the same business day;

(c) The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

(d) The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number and value to the shares of Preferred Stock sold by the Accounts to TTC;

(e) A qualified independent fiduciary (the Independent Fiduciary) determined that the transactions described herein were in the best interests and protective of the Accounts at the time of the transactions; and

(f) The Independent Fiduciary supervised the transactions; assured that the conditions of this proposed exemption were met; and took whatever actions necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 1, 1998.

Summary of Facts and Representations

1. The applicants describe the Plans and the Accounts as follows:

a. The GUS Plan is an individual account, defined contribution plan sponsored by Genito-Urinary Surgeons, Inc., a medical practice located in Toledo, Ohio. The trustee of the GUS Plan is the Fifth-Third Bank. Currently, the GUS Plan has 45 participants and holds assets valued at approximately $19,900,000. As of August 12, 1998 the Emmert Account held assets valued at $1,480,734.07.

b. The Rosenberg Plan is an individual account, defined contribution plan sponsored and trusteed by Michael J. Rosenberg. Currently, the Rosenberg Plan has two participants and holds assets valued at approximately $266,000. As of December 31, 1997, the Rosenberg Account held assets valued at $231,380.

c. The Savage Plan is an individual account, defined contribution plan sponsored and trusteed by Robert Savage. Currently, the Savage Plan has 45 participants and holds assets valued at $2,200,000. As of December 31, 1997, the Savage Account held assets valued at $1,174,488.15.

2. TTC, the issuer of the Preferred Stock, is an Ohio corporation that was incorporated in April 1990. The Trust Company of Toledo (TTCOT) is a wholly-owned subsidiary of TTC. The applicant represents that TTCOT is a ''Bank'' as that term is defined in Section 202(a)(2) of the Investment Advisers Act of 1940.[1]

3. TTC was capitalized with one class of common stock (the Common Stock), one class of Preferred Stock and $1,000,000 of 9% debentures (the Debentures). Originally, 3,531 shares of Common Stock were outstanding prior to the subject transactions. These shares were owned in equal amounts by Theodore T. Hahn, Julie B. Higgins and David A. Snavely. These individuals are the three founders, principals and partners of TTC.

Prior to the subject transactions, there were 20,000 shares of the Preferred Stock outstanding that were held by 65 different shareholders. The Preferred Stock was issued by TTC through a private offering that took place in 1990. The offering provided investors with the opportunity to acquire units comprised of 200 shares of Preferred Stock and one $10,000 Debenture, which had a maturity date of December 31, 2000.[2] The price for each unit was $30,000. Of this amount, $20,000 was allocated to the Preferred Stock and $10,000 was allocated to the Debenture.[3]

The following table outlines the percentage of each Participant's Account assets invested in the units of Preferred Stock and Debentures at the time of acquisition and at the time of the subject trans action:[4]

Plan	Shares of preferred stock	Cost	Debenture	% Assets then	% Assets now
Emmert	200	$20,000	$10,000	7.5	5.3
Rosenberg	200	20,000	10,000	48	23.4
Savage	200	20,000	10,000	16.5	6.5

4. While owning shares of the Preferred Stock, each Account had been a minority shareholder of TTC. However, the applicants represent that the Participants did not, in their individual capacity, own shares of the Preferred Stock prior to the subject transactions. As such, the applicants state that the purchase of shares of the Common Stock by the Participants pursuant to the subject transaction did not cause any of the Participants to become majority shareholders of TTC. The applicants further represent that none of the Participants was, or currently is, an officer, director, principal or employee of TTC or TTCOT. Finally, the applicants represent that, at the time of original acquisition of the Preferred Stock by the Accounts, neither TTC nor TTCOT was a party in interest with respect to the Plans.

5. TTC recently obtained authority from its shareholders to amend, by total restatement, its Amended and Restated Articles of Incorporation. Due to business and income tax considerations, TTC adopted the Second Amended and Restated Articles of Incorporation to change its corporate tax status, in accordance with section 1362 of the Code,[5] from a Subchapter C corporation to a Subchapter S corporation for the taxable years commencing January 1, 1999. As part of the change, the amendment called for the full conversion of the Preferred Stock into Common Stock.

6. On May 1, 1998, TTC sent certain documents to its shareholders, including the Participants. These documents stated that TTC planned to redeem, via cancellation, all of the shares of the Preferred Stock held by those shareholders who would have adverse tax consequences from continued ownership of shares in a Subchapter S corporation or who were ineligible to hold shares in a Subchapter S corporation pursuant to the Code.

TTC provided a mechanism whereby eligible shareholders, including employee benefit plans, could designate a related party to purchase shares of TTC Common Stock equal to the number of shares sold by the Accounts. Such purchase was to be for a cash amount equal to the price paid per share by TTC for redemption of the Preferred Stock.

7. The applicants request exemptive relief for the sale of the Preferred Stock by each Account to its respective Participant. The applicants represent that the Accounts benefitted from significant appreciation since purchasing the Preferred Stock as demonstrated by the fact that the value of the Preferred Stock increased from $100 per share in 1990 to $291.70 as of December 31, 1997.[6] The applicants believe that at the time of the subject transactions, price levels were such that an excellent opportunity for the sale of the Preferred Stock existed. Accordingly, they wished to sell the

[1] The applicant represents that under Section 202(a)(2) of the Investment Advisers Act of 1940, a ''Bank'' means (A) banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other institution or trust company, whether incorporated or not, doing business under the laws of any State of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the U.S. Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[2] The outstanding principal amount of the Debentures held by the Accounts and other investors was prepaid by TTC in December 1998, prior to the subject transactions, in accordance with terms of the Debentures.

[3] Pursuant to the Memorandum, dividends were not expected to be paid on the Preferred Stock, and no dividends were paid on such shares.

[4] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.* Rev. Rul. 73–5332, 1973–2 C.B. 128. However, it is not within the purview of the Department's jurisdiction to express an opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Stock by Mr. Rosenberg.

[5] Section 1362 of the Code contains provisions which allow a small business corporation to elect and terminate Subchapter-S corporate status.

[6] As for the Debentures, which were redeemed in annual installments of $200,000, the outstanding principal amount was $400,000 as of March 31, 1998.

Preferred Stock from their respective Accounts to ensure that each Account realized a substantial profit.

In addition, the applicants represented that the continued holding of the newly issued Common Stock would have caused the Accounts to incur unrelated business income tax pursuant to section 512 of the Code.

Due to the aforementioned reasons, the applicants seek relief for the following transactions: (1) the cash sale of shares of the Preferred Stock to TTC by the Emmert Account, the Rosenberg Account, and the Savage Account; and (2) the subsequent purchase under the above described agreement with TTC of an equal number and value of shares of the Common Stock by Messrs. Emmert, Rosenberg and Savage, in their own name, from TTC immediately after the sale by the Accounts.

8. The sales price for the Preferred Stock was obtained through a written valuation of the shares dated May 6, 1998 prepared by Austin Financial Services, Inc. (Austin), a qualified, independent consulting firm with substantial experience in the financial services industry. Austin was retained by the TTC Board of Directors for the purpose of valuing TTC and its shares of Preferred Stock and Common Stock. In determining fair market value of the Preferred and Common Stock, Austin relied on the discounted cash flow method and the capitalization of earnings method. After weighing the two methods, Austin determined that the fair market value of all the outstanding shares of the Preferred and Common Stock was approximately $7,263,035, or $308.66 per share for each outstanding share of Preferred and Common Stock. Austin updated this valuation at the time of the transaction, and reached the same conclusion regarding the fair market value. Accordingly, each Account received a total of $61,732 for its shares of Preferred Stock, as of the date of Conversion.

9. TTC also engaged the law firm of Callister Nebeker & McCullough of Salt Lake City, Utah (CNM) to serve as the Independent Fiduciary for the Plans. CNM, which represented that it had experience serving as independent fiduciary for employee benefit plans, was hired to review the offer of redemption of the Preferred Stock, to render an opinion as to the prudence of the investment decisions relating thereto, and to direct the sale of shares as appropriate. In a report dated April 29, 1998 (the Report), CNM acknowledged its appointment as the Independent Fiduciary for the Accounts regarding the subject transactions.

As the Independent Fiduciary, CNM determined whether the subject transactions, and the actions taken by the Accounts in connection therewith, were in the best interests of such Accounts and in accordance with the requirements of the Act. Before doing so, each Participant made a separate determination that the proposed transactions would be in the best interests of their Accounts. Subsequent to arriving at this conclusion, a determination was made to retain CNM as Independent Fiduciary for the Accounts to ensure that the terms of such transactions, including the appraisal made of the fair market value of the Preferred Stock, would be protective of the Accounts.

In a letter dated August 25, 1998 that was submitted to the Department, CNM acknowledged that, as an independent fiduciary, it understood the duties and responsibilities imposed by the Act. Further, CNM concluded that the subject transactions would be prudent and in the best interest of each of the Accounts. Finally, CNM stated that it would ensure, among other things, that the fair market value of the Preferred Stock would be updated on the date of the transactions, and that each Account would receive the correct amount of cash for the Preferred Stock.

10. The Independent Fiduciary appointed Houlihan Valuation Advisors (HVA), an independent appraisal firm maintaining offices in Salt Lake City, Utah, to provide an opinion as to the fairness (the Fairness Opinion) of the proposed sale transaction from a financial standpoint. In the Fairness Opinion, HVA stated that the Preferred Stock was essentially equivalent to the Common Stock because the Preferred Stock: (a) was convertible at the option of the holder into Common Stock; (b) had voting privileges identical to the Common Stock; and (c) paid no preferred dividends. The Preferred Stock did have a $100 per share liquidation presence; however, according to HVA, the fair market value of TTC is significantly higher than its liquidation value, rendering this liquidation preference virtually meaningless.

Based on the foregoing, HVA concluded that the sale of the Preferred Stock by the Accounts to TTC would be fair to the Accounts because the Accounts would receive adequate consideration for their shares.

11. In summary, the applicant represents that the subject transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, in their individual capacity, were one-time transactions for cash;

(b) The transactions described in (a) above took place on the same business day;

(c) The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

(d) The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number and value to the shares of Preferred Stock sold by the Accounts to TTC;

(e) The Independent Fiduciary determined that the transactions described herein were in the best interests and protective of the Accounts at the time of the transactions; and

(f) The Independent Fiduciary supervised the transactions; assured that the conditions of this proposed exemption were met; and took whatever actions necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

Notice to Interested Persons: Because the only assets of the Plans involved in the subject transactions are those held in the Accounts, and no other participants in the Plans are affected by the transactions, it has been determined that there is no need to distribute this notice of proposed exemption to any interested persons other than the Participants. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James Scott Frazier of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Mellon Financial Markets, Inc. (Mellon) Located in Pittsburgh, Pennsylvania

[Application No. D–10695]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between

the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[7]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[8] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[9]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and

[7] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[8] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which Mellon or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. ''Underwriter'' means:

(1) Mellon;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Mellon; or

(3) Any member of an underwriting syndicate or selling group of which Mellon or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. ''Rating Agency'' means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch), or their successors.

X. ''Capitalized Interest Account'' means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. ''Closing Date'' means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. ''Pre-Funding Account'' means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. ''Pre-Funding Period'' means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. ''Mellon'' means Mellon Financial Markets, Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (see 60 FR at 35932).

Summary of Facts and Representations

1. Mellon is a broker-dealer registered with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers, Inc. As of December 31, 1997, it had total assets of $78.8 million.

Mellon is a wholly-owned subsidiary of Mellon Bank Corporation (MBC), a bank holding with its principal offices located in Pittsburgh, Pennsylvania. Mellon was established as a broker-dealer subsidiary of MBC pursuant to an order of the U.S. Federal Reserve Board effective April 17, 1995, as modified by a release adopted December 20, 1996 (as modified, the Order). The Federal Reserve Board regulates MBC as a bank holding company and restricts non-banking activities of MBC and its affiliates under the Glass-Steagall Act.

Under the Order, Mellon is authorized to engage, to a limited extent, in underwriting and dealing in certain mortgage-related securities, municipal revenue bonds, commercial paper and consumer receivables-related securities. In addition, Mellon is authorized to act as agent in the private placement of all types of securities, including providing related advisory services, and to buy and sell securities on the order of investors. The Order is subject to the condition that Mellon does not derive more than a limited percentage of its total gross revenues over any two-year period from underwriting and dealing in certain categories of securities, including asset-backed securities of the type described herein.

Several other broker-dealer subsidiaries of bank holding companies have been authorized by the Federal Reserve Board to engage in so-called ''Tier 2'' activities (in addition to the ''Tier 1'' activities described in the Order), including the ability to underwrite and deal in all types of debt and equity securities. Mellon intends to apply for the additional authorization and hopes to obtain an approving order from the Federal Reserve Board in the near future.

Mellon has been involved in the structuring and placement of asset-backed securities transactions since November 1995. Mellon has served as co-lead underwriter in public offerings of certificates backed by insurance premium finance loans, home equity revolving line of credit loans, residential mortgage loans and credit card receivables, involving amounts ranging from $200 million up to $869 million. In March, 1997, Mellon instituted a program to securitize mortgage-related assets.

MBC, the parent of Mellon, is one of the largest commercial banking organizations in the United States, with total assets of approximately $45 billion as of the end of 1997 (and approximately $1.5 trillion in assets under management and administration). MBC's subsidiaries include Mellon Bank, N.A., a leading national bank that provides a full range of corporate and consumer banking, trust, custody and investment management services, and The Dreyfus Corporation, a sponsor of investment companies (i.e., mutual funds) registered under the Investment Company Act of 1940.

Trust Assets

2. Mellon seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family

residential or commercial mortgage investment trusts; [10] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[11]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[12]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[13] The sponsor or servicer of a trust selects assets to be included in the trust.[14] These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[15]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

Mellon, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by Mellon on a firm commitment basis. In addition, Mellon anticipates that it may privately place certificates on both a firm commitment and an agency basis. Mellon may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Mellon requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[16]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with

[10] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Mellon requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Mellon has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[11] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of ''plan assets'' (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[12] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[13] The Department is of the view that the term ''trust'' includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[14] It is the Department's view that the definition of ''trust'' contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[15] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

[16] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[17]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust (''FASIT''), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure With Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to an underwriter for cash or to the certificateholders directly if the certificates are sold through a placement agent. The cash received by the sponsor from the certificateholders (or the underwriter) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (i.e., servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or

[17] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In such situations, the sponsor could sell the receivables into the trust at a discount, and more receivables would be used to fund the trust in order to support the pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will either be: (i) monitored by a credit support provider or other insurance provider which is independent of the sponsor; or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, Mellon and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home-owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

12. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Mellon, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). Mellon represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (i.e., Mellon, its affiliate, or a member of an underwriting syndicate or selling group of which Mellon or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to Mellon. In other cases, however, affiliates of Mellon may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[18] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of

[18] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. Mellon may contemplate entering into forward delivery commitments in connection with the offering of pass-through certificates. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and Mellon may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. Mellon's normal policy would be to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Mellon's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times, Mellon will facilitate sales by investors who purchase certificates if Mellon has acted as agent or principal in the original private placement of the certificates and if such investors request Mellon's assistance.

Summary

30. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding period limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which Mellon seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) Mellon anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Operating Engineers Local 324 Journeyman and Apprentice Training Fund (the Plan), located in Howell, Michigan (Application No. L–10645).

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (2) of the Act shall not apply to: (1) The proposed loan of $1,500,000 (the Loan) to the Plan by the International Union of Operating Engineers Local 324, AFL–CIO (the Union), a party in interest with respect to the Plan, for the repayment of certain outstanding loans (the Original Loans) made to the Plan by the Michigan National Bank (the Bank), an unrelated party; and (2) as of March 12, 1998, the pledging of certificates of deposit by the Union as security for the Original Loans; provided that the following conditions are met:

(a) The terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's-length transaction with an unrelated party;

(b) The Plan's trustees determine that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) An independent fiduciary acting on behalf of the Plan (the Independent Fiduciary) reviews the terms of the Loan and determines that the Loan is protective of and in the best interests of the Plan;

(d) The Independent Fiduciary monitors the Loan, as well as the conditions of this proposed exemption (if granted), and takes whatever actions are necessary to safeguard the interests of the Plan under the Loan;

(e) The Loan is repaid by the Plan solely with funds the Plan retains after paying all of its operational expenses; and

(f) The terms and conditions relating to the pledging of the certificates of deposit by the Union as security for the Original Loans were in the best interest of the Plan and its participants and beneficiaries.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of March 12, 1998.

Summary of Facts and Representations

1. The Union is located in Livonia, Michigan and represents workers who are engaged primarily in heavy construction projects throughout the state of Michigan. The Plan was established by the Union in 1964 as a training program for individuals who are members of the Union and are employed by contributing employers with regard to the Plan. The purpose of the Plan is to provide eligible participants (the Participants) with the skills necessary to operate and repair construction equipment. The Plan had approximately 11,500 participants and $12,664,604 in total assets, as of August 31, 1998.

2. Among the Plan's assets is an indoor training facility (the Facility) located in Howell, Michigan. The Facility is comprised mainly of classrooms and an indoor work area, and is used by the Participants to acquire additional construction training. The Facility is situated on 365 acres of real property (the Property) which is also owned by the Plan. The Property is used by the Participants as an outdoor construction training area.

3. The trustees of the Plan (the Trustees) represent that, in the spring of 1997, they anticipated a significant increase in the amount of training hours the Participants would be spending in the Facility during the upcoming years. The Trustees state that this potential increase was due to a growing demand for construction workers throughout Michigan, stricter training requirements for workers who handle hazardous waste, and increasingly sophisticated construction equipment. In this regard, the Participants trained a total of approximately 32,000 hours in the Facility in 1997, and will train a total of approximately 43,200 hours in the Facility in 1998. The Trustees believe that there will be additional increases in Participant usage of the Facility in future years.

4. The Trustees determined that the Facility was inadequate to handle the anticipated increase in use by the Participants. As a result, in March 1998, the Trustees decided to expand the Facility (the Expansion) at a projected cost of $1,500,000. The Expansion consisted of the addition of three classrooms to the Facility and an enlargement of the Facility's indoor repair area. The Expansion also included maintenance repairs on the Facility. The Expansion was completed on September 26, 1998.

5. To finance the Expansion, the Trustees caused the Plan to receive two loans (i.e. the Original Loans) from the Bank. The first loan (the First Loan) was entered into on May 12, 1998 for $1,000,000 and was secured with a certificate of deposit (CD) pledged by the Union in the amount of $1,000,000. The second loan (the Second Loan) was entered into on July 28, 1998 for $500,000 and was secured with a CD pledged by the Union in the amount of $500,000.

6. The Original Loans each had a term of 12 months and required that the Plan pay a fixed rate of interest. At the time the First Loan and the Second Loan

were made, the interest rates for each were set at two percentage points above the interest rate the Bank currently paid on its 12 month CDs. At the time the First Loan was made, the Bank was paying 5.25% on its 12 month CDs. As a result, the interest rate the Plan pays on the First Loan is 7.25%. At the time the Second Loan was made, the Bank was paying 5.17% on its 12 month CDs. As a result, the interest rate the Plan pays on the Second Loan is 7.17%.

7. The Union proposes to lend the Plan, under the terms of the Loan, an amount equal to the entire principal amount of the Original Loans (i.e. $1,500,000). The Union represents that the Loan will be used by the Plan to repay the Original Loans. The Union also represents that the Plan will not pay any fees associated with the Loan. The Loan will have a term of seven years and will be unsecured. Additionally, the Loan will have a seven year amortization schedule (the Schedule) and monthly payments of principal and interest until maturity.

The Trustees of the Plan represent that the Schedule is beneficial to the Plan since it allows the Plan to gradually pay down the principal amount of the Loan. The Trustees represent that the terms of the Original Loans do not provide for amortization of the Original Loans' principal amounts. Thus, absent any renewals of the Original Loans by the Bank, the Plan must repay the entire principal amount of the Original Loans at maturity. In this regard, the Trustees represent that the terms of the Original Loans cause a liquidity problem for the Plan in that the Plan is required to reserve funds for the repayment of the principal amounts of the Original Loans. The Trustees represent that the Schedule allows for a more efficient allocation of Plan resources.

8. The Union represents that the terms of the Loan are more favorable to the Plan than the terms of the Original Loans. The Union represents that the Plan will repay the Loan solely with funds retained by the Plan after paying for all of its operational expenses (the Excess Funds).[19] In the event that the Plan has no Excess Funds at the time a payment by the Plan is due, the Union represents that the Loan will be suspended (the Suspension Period).[20] The Union represents that during any Suspension Period, the Plan will not be required to make any principal or interest payments on the Loan.[21] In addition, the Union represents that no interest on the Loan will accrue during the Suspension Period.

The Trustees represent that the interest rate paid by the Plan to the Union on the Loan will be less than the interest rates paid by the Plan on the Original Loans. The interest rate the Plan will pay on the Loan (the New Rate) will be a floating rate based on the Wall Street Journal Jumbo CD Rate (the WSJ CD Rate) for CDs with a duration of 12 months. The New Rate will be initially set at the lesser of (i) 6.02% (the WSJ CD Rate as of November 9, 1998, plus 1%), or (ii) a rate which is 1% above the WSJ CD Rate at the time the Loan is consummated. The New Rate will be reset on the first day of January, April, July, and October to equal the rate which is 1% above the WSJ CD Rate at that time. However, in no event will the New Rate exceed 7.25% per annum, the rate the Plan currently pays the Bank under the First Loan.

In addition, the New Rate will be more favorable to the Plan than the interest rate the Plan would have paid on a renewal of the Original Loans from the Bank. The New Rate will only be 1% above the WSJ CD Rate for 12-month CDs which will be significantly less than a rate which is 2% above the Bank's 12-month CD rate. The Trustees estimate that setting the interest rate on the Loan at the New Rate will result in a savings to the Plan in excess of $61,000 during the term of the Loan.

9. The terms of the Loan will be monitored by Richard Czapski (Mr. Czapski) of Plante and Moran, LLP (Plante and Moran), who will act as the Plan's Independent Fiduciary. Plante and Moran is a public accounting firm having offices in Michigan and Ohio. Mr. Czapski is a partner with Plante and Moran. Mr. Czapski represents that he is qualified to act as the Independent Fiduciary because he is experienced in matters concerning pension plans and bank loans. Mr. Czapski states that he will rely on the advice of an experienced ERISA counsel, if necessary, to determine what actions are appropriate to safeguard the interests of the Plan throughout the duration of the Loan.

Mr. Czapski represents that he has evaluated the terms of the Loan and has determined that the Loan would be in the best interests and protective of the Plan and its participants and beneficiaries. Mr. Czapski states that he will monitor the Plan's repayment of the Loan. Mr. Czapski will represent the Plan, as the Independent Fiduciary, to enforce the Plan's rights under the terms and conditions of the Loan and will take whatever actions are necessary to protect the interests of the Plan.

10. In summary, the applicant represents that the transactions satisfy the statutory criteria contained in section 408(a) of the Act for the following reasons:

(a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Trustees have determined that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) Mr. Czapski, as the Plan's Independent Fiduciary, has reviewed the terms and conditions of the Loan and determined that the Loan would be appropriate for, and in the best interests of, the Plan;

(d) Mr. Czapski, as the Plan's Independent Fiduciary, will monitor the Loan, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plan;

(e) The New Rate initially will be the lesser of 6.02% or 1% above the WSJ CD Rate as of the date of the Loan, an interest rate which will be significantly less than the rates currently paid by the Plan under the Original Loans (i.e. 7.25% and 7.17%, respectively); and

(f) The Loan will be repaid by the Plan solely with funds retained by the Plan after paying for all of its operational expenses.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (this is not a toll free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction

[19] The Union represents that the Plan's operational expenses are funded by contributions made to the Plan by contributing employers. These contributions are based on a portion of each Participant's hourly wage that is paid by such employers. The Union represents that the Participants' hourly wage rate is negotiated between the Union and the contributing employers each year. Thus, the Union represents that the Particicants' wage deduction amount for contributions made by the employers to the Plan is determined by the parties each year.

[20] The Union represents that computation of the amount of Excess Funds available for the repayment on the Loan will be done according to generally accepted accounting principles by a certified public accountant representing the Plan.

[21] The Union represents that if the Suspension Period causes there to be an outstanding principal balance on the Loan at the end of the seven-year term, the duration of the Loan will be extended and the Plan will be obligated to continue making monthly payments of principal and interest until the Loan is paid in full. In this regard, the Plan will not be required to make any lump-sum payment for the outstanding principal balance at any time.

provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 14th day of January 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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federal register

Thursday
January 21, 1999

Part III

Department of the Interior

Minerals Management Service

30 CFR Part 204

Accounting Relief for Marginal Properties; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 204

RIN 1010–AC30

Accounting Relief for Marginal Properties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing new regulations implementing recently enacted legislation for Federal oil and gas leases. The new regulations would explain to lessees and their designees how to obtain royalty prepayment and accounting and auditing relief for Federal marginal properties.

DATES: MMS must receive all comments on or before March 22, 1999. We will begin reviewing comments then and may not fully consider comments we receive after March 22, 1999.

ADDRESSES: Submit your written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432; fax (303) 231–3385; e-mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Nick E. Fadely of the Royalty Management Program, MMS, and Sarah L. Inderbitzin of the Office of the Solicitor, Department of the Interior.

I. Introduction

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA), Pub. L. 104–185, as corrected by Pub. L. 104–200. RSFA amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1711 *et seq.*, in many respects. Section 7 of RSFA allows MMS and the State concerned (defined under RSFA as ''a State which receives a portion of royalties or other payments under the mineral leasing laws from [a Federal onshore or OCS oil and gas lease],'' 30 U.S.C. 1701(31)) to provide royalty prepayment and regulatory relief for marginal properties for Federal onshore and Outer Continental Shelf (OCS) oil and gas leases. 30 U.S.C. 1727. The stated purpose of granting relief to marginal properties under RSFA is to promote production, reduce administrative costs, and increase net receipts to the United States and the States. 30 U.S.C. 1727(a).

Under RSFA, the State concerned must consent to any prepayment or auditing relief. 30 U.S.C. 1727(a). In addition, MMS and the State concerned must jointly determine, on a case-by-case basis, the amount of marginal production that may be subject to either a prepayment of royalty or accounting and auditing relief. *Id.* Although RSFA does not define marginal properties for purposes of Section 7, it does define marginal properties under section 6(d)(4), 30 U.S.C. 1726(d)(4), as a ''lease that produces on average the combined equivalent of less than 15 barrels of oil equivalents per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof.'' In addition, under section 6(d)(4), the production level is calculated ''by dividing the average daily production of crude oil and natural gas from producing wells on such leases by the number of such wells, unless the Secretary, together with the State concerned, determine that a different production is more appropriate.''

RSFA also requires MMS and the States to ''provide accounting, reporting and auditing relief'' for marginal properties. 30 U.S.C. 1727(c). However, such relief may only be granted in a State that concurs with this relief. *Id.*

In response to the RSFA section 7 amendments, MMS conducted three workshops to receive input from a wide variety of constituent groups to develop the proposed rule. The workshops were held at MMS offices in Denver, Colorado, on October 31, 1996, January 23, 1997, and November 5, 1997. Representatives from several Federal and State government organizations participated along with industry trade organizations representing both small and large Federal oil and gas lessees. The input received during these workshops was instrumental in developing the proposed rule.

The proposed rule implements sections 7(a) and 7(c) of RSFA. 30 U.S.C. 1727(a) and 1727(c). Although section 7 of RSFA provides two alternatives for marginal properties, one for prepayment of royalty under section 7(b), and another for accounting and auditing relief under section 7(c), this proposed rule only implements the general provisions for marginal properties and the accounting and auditing relief provisions. MMS will publish a proposed rule covering prepayment of royalty under section 7(b) of RSFA at a later date.

The Department of the Interior's (Department) practice is to give the public an opportunity to participate in the rulemaking process. You may send written comments to the location cited in the **ADDRESSES** section of this preamble. We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov or you may contact David S. Guzy, Chief, Rules and Publications Staff, MMS, telephone (303) 231–3432; fax (303) 231–3385; e-mail David__Guzy@mms.gov.

II. Section-by-Section Analysis

30 CFR Part 204—Alternatives For Marginal Properties

MMS proposes to include a new part 204 in its regulations. This part would implement the new requirements of section 7 of RSFA. However, as noted above, the substantive rules for prepayment of royalty are not included in this proposed rule. We would reserve subpart B for a later rulemaking.

Part 204, Subpart A—General Provisions

This subpart would provide general requirements for both prepayment of royalty under section 7(b) of RSFA and accounting and auditing relief under section 7(c) of RSFA. However, as noted above, the substantive rules for prepayment of royalty are not included in this proposed rule. We would reserve subpart B for a later rulemaking.

Section 204.1 What is the Purpose of this Part?

This part would explain how a lessee or its designee, of a Federal onshore or OCS lease may obtain prepayment or accounting and auditing relief for certain marginal properties. The prepayment portions of this rule would be proposed in a later rulemaking. Under RSFA, the lessee's ''designee'' is a person the lessee designates in writing to MMS to report and pay royalties on its behalf. RSFA section 6(g) (codified as corrected at 30 U.S.C. 1712(a)). MMS has addressed the procedure to designate a designee in another rulemaking. 62 FR 42062 (1997) (Codified at 30 CFR 218.52).

Section 204.2 Definitions

This section would define terms applicable to this part.

''Agreement'' would mean a federally approved communitization agreement or unit participating area.

''Barrels of oil equivalents'' would mean the ''combined equivalent production'' of oil and gas stated in barrels of oil. Under this definition, each barrel of oil production would be equal to one barrel of oil equivalents. Each six thousand cubic feet of gas production at standard temperature and pressure also would be equal to one barrel of oil equivalents. This definition also is consistent with the use of this term in the definition of ''marginal properties'' under section 6(d)(4) of RSFA.

''Base period'' would mean the 12-month period from October 1 through September 30 immediately preceding the applicable calendar year in which you take or request marginal property relief. The term ''base period'' is used throughout the rule to calculate whether a property qualifies for certain relief during the current calendar year. For example, if you want to qualify for relief beginning in calendar year 2000, the base period for that calendar year would be from October 1, 1998, through September 30, 1999.

''Combined equivalent production'' would mean the total of all oil and gas production for the marginal property, stated in barrels of oil equivalents. This definition is consistent with the use of that term in the definition of ''marginal properties'' under section 6(d)(4) of RSFA discussed in the introduction.

''Designee'' would mean the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf. This definition is essentially the same as that under RSFA § 2(1), FOGRMA, 30 U.S.C. 1702(24). Accordingly, the definition would cite the rule implementing the requirements of RSFA § 6(g), FOGRMA § 102(a), 30 U.S.C. 1712(a), which allows lessees to designate another person to pay royalties on their behalf by written notice filed with MMS.

''Producing wells'' would mean only those producing oil or gas wells that contribute to the sum of barrels of oil equivalents used in the calculation under § 204.004(c) of this part. This definition would not include injection and water wells.

''State concerned'' (State) would mean the State which receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease. For example, this includes States that receive revenues from onshore leasing under the Mineral Leasing Act, 30 U.S.C. 191, or from the OCS under 43 U.S.C. 1337(g). This definition is the same as that under RSFA, 30 U.S.C. 1701(31).

Section 204.3 What Alternatives Are Available for Marginal Properties?

This section would explain what alternatives are available to a lessee or its designee if they have production from a marginal property.

Paragraph (a) would explain the prepayment of royalty alternative. For this alternative, MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term. Although MMS is not including the RSFA section 7(b) prepayment of royalty requirements in this proposed rulemaking, it will do so at a later date under subpart B. However, the general requirements in subpart A would apply to the prepayment of royalty alternative under subpart B when that subpart is published.

Paragraph (b) would explain the accounting and auditing relief alternative. For this alternative, MMS and the State may allow various accounting and auditing relief options intended to encourage you to continue to produce and develop your marginal property. The requirements for taking accounting and auditing relief would be under subpart C.

Section 204.4 What Is a Marginal Property Under This Part?

This section would explain what properties qualify as ''marginal'' under this part. As explained further below, property does not just mean a lease for purposes of this rule.

Only properties that qualify under this section could obtain royalty prepayment or accounting and auditing relief under this part. However, you must meet additional qualifications under §§ 204.203, 204.204, and 204.205 to obtain some of the accounting and auditing relief options.

Paragraph (a) would explain what kinds of properties may qualify as ''marginal'' under this part. To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your production must be from, or attributable to, a Federal onshore or OCS lease. Indian leases would not be eligible for the marginal property alternatives under this part even though production from a qualifying marginal property may be attributable to an Indian lease.

Under paragraph (a)(1), if your lease is not in an Agreement, then your entire lease is a property that must qualify as a marginal property under paragraph (b) of this section. In other words, these are ''stand alone'' Federal leases and the entire lease would have to qualify under this part.

Under paragraph (a)(2), if all or a portion of your lease is in one Agreement, then the entire Agreement must qualify as a marginal property under paragraph (b) of this section. For example, even if other leases in the participating area are not Federal leases, you must use the production attributable to those leases, as well as your lease, in order to make the calculation under paragraphs (b) and (c) of this section to determine whether the Agreement meets the production level limits under paragraph (b) of this section. If your Agreement does qualify, then only the production attributable to your lease may be separately eligible for relief under this part. However, any production from your lease that is not in the Agreement also may be eligible for relief under paragraph (a)(4) of this section.

Under paragraph (a)(3), if all or a portion of your lease is in more than one Agreement, then each Agreement must qualify separately as a marginal property under paragraph (b) of this section. In addition, for each Agreement that qualifies, only the production attributable to your lease would be eligible for relief under this part. For example, if 50 percent of your lease is included in Agreement ''A'', and 50 percent of your lease is included in Agreement ''B'', then Agreement ''A'' must qualify as marginal in order for the 50 percent of your lease included in Agreement ''A'' to be eligible for relief. Likewise, in order for the 50 percent of your lease included in Agreement ''B'' to be eligible for relief, Agreement ''B'' must qualify as marginal.

Under paragraph (a)(4), if a portion of your lease is in an Agreement and you have production from the portion of the lease that is not in the Agreement, then the portion of the lease that is not in the Agreement must qualify separately as a marginal property under paragraph (b) of this section. For example, if 50 percent of your lease is included in an Agreement and 50 percent is not, if the 50 percent that is not included in the Agreement qualifies as marginal under paragraph (b) of this section, then that 50 percent may be eligible for relief under this part. This would be true even if the 50 percent that is included in the Agreement does not qualify as marginal under this part.

Paragraph (b) would provide that to qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalents per well per day calculated under paragraph (c) of this section.

As stated above, section 7 of RSFA provides for two alternatives without specifically defining a marginal property under that section. However, subsection 6(d)(4) of RSFA defines a marginal property as a lease which produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day.

Several participants at the October 31, 1996, workshop for marginal properties stated that MMS should use State incentive program production levels to qualify as a marginal property. However, upon review of the various State incentive programs and the unique nature of each, MMS determined that using State incentive program production levels would require MMS to develop different production levels for each State with incentive programs, for States without incentive programs, and for offshore production if it adopted this approach. Therefore, MMS determined that using State incentive program production levels would be too onerous for use under this part.

At the January 23, 1997, workshop for marginal properties, several participants stated that MMS should consider using the RSFA production levels for marginal properties under section 6(d)(4) to determine marginal properties under this part. Other participants stated that using RSFA section 6(d)(4) production levels would qualify too many properties as marginal, and result in an unmanageable workload for MMS and States. However, MMS considers using the production levels set forth in RSFA less onerous than varying production levels based on where a lease is located as would result if MMS used State incentive program production for qualification purposes. Moreover, the States and industry participated in the legislative process which culminated in the production levels under section 6(d)(4) of RSFA.

Thus, in order to be consistent with other sections of RSFA, as well as to apply a consistent standard nationwide, MMS proposes to use the production levels in the definition of ''marginal properties'' in section 6(d)(4), together with other requirements, as a basis for what amount of marginal production qualifies a property as ''marginal'' under this part. MMS shares the concerns expressed in the workshop about the administrative burden for it and States under these proposed production levels and invites specific comments concerning those levels. Because RSFA section 7(a) requires that MMS and the State ''jointly determine, on a case-by-case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof'' may obtain royalty prepayment or accounting and auditing relief, MMS specifically requests that States comment on these production levels. Any State that does not concur with the production levels MMS ultimately adopts under a final rule may decline to offer alternatives under § 204.214 of this part. MMS also invites comments on whether separate levels should be established for offshore leases.

Paragraph (c) would explain how to calculate the production levels for your property to determine whether it qualifies as ''marginal'' under paragraph (b). This calculation would also be based, in part, on the definition of marginal properties under RSFA section (6)(d)(4). To determine the average daily well production for a property, you would divide the sum of the barrels of oil equivalents for all producing wells on the property by the sum of the number of days each of those wells actually produced during the base period. If the result obtained is less than 15 barrels of oil equivalents per well per day, your property would qualify as a marginal property under this part. Paragraph (c) also would provide that if the property is an Agreement, this calculation would have to include all wells in the Agreement even if they are not on a Federal onshore or OCS lease.

Only producing oil and/or gas wells that contribute to the sum of barrels of oil equivalents are used in the calculation. Injection and water wells are not used in the calculation. For example, assume the marginal property has 5 wells. Well #1 produced 250 days in the base period, Well #2 produced 300 days, Well #3 produced 275 days, Well #4 produced 325 days, and Well #5 produced 350 days in the base period. This equals 1,500 production days. Assume also that 15,000 barrels of oil equivalents were produced from these five wells in the base period. This equals 10 barrels per well per day (15,000 barrels/1,500 days), and the property would qualify as a marginal property.

Section 204.5 What Statutory Requirements Must I Meet To Obtain Royalty Prepayment or Accounting and Auditing Relief?

Paragraph (a) would state the three statutory conditions under RSFA that MMS and the State concerned will consider prior to approving any marginal property alternative under this part. Thus, the rule would provide that MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to: (1) promote production; (2) reduce administrative costs; and (3) increase net receipts to the United States and the State. 30 U.S.C. 1726(a).

Paragraph (b) would state that MMS and the State may discontinue any royalty prepayment or accounting and auditing relief options granted for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief option is no longer in the best interests of the Federal Government and the State to accomplish the objectives identified in paragraph (a).

Section 204.6 May I Appeal if MMS Denies My Request for Prepayment or Accounting and Auditing Relief?

This section would explain how you may appeal if MMS denies your request for prepayment or accounting and auditing relief. If MMS denies your request for prepayment or accounting and auditing relief under this part because the State denied your request, you could not appeal MMS's decision under 30 CFR part 290 or 43 CFR part 4, subpart J. This is because RSFA section 7(a) provides the State with unconditional veto authority over such requests. Accordingly, MMS believes that it does not have authority, and Congress did not intend for it, to change a State's decision through the administrative appeal process. Thus, you only could challenge a State's denial of your request directly in Federal district court. However, under paragraph (b), you could appeal any other MMS action on your request under 30 CFR part 290 or 43 CFR part 4, subpart J.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

Section 204.200 What Is the Purpose of This Subpart?

This subpart would explain how a lessee or its designee may obtain the accounting and auditing relief required under section 117(c) of FOGRMA for production from a marginal property.

Section 204.201 Who May Obtain Accounting and Auditing Relief Under This Subpart?

Paragraph (a) would explain that you may obtain accounting and auditing relief under this subpart if you are a lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4 of this part.

For some relief options, greater forms of relief would be available for marginal properties that produce less than other marginal properties. Therefore, paragraph (b) would explain that you also must meet any additional requirements for specific types of relief under this subpart. In addition, all options would be subject to a State disallowing that relief option under § 204.214 of this subpart.

Under paragraph (c), you could only request and obtain accounting and auditing relief for your individual fractional interest in a marginal property. However, the rule would not require all lessees or designees in a marginal property to seek relief. It also would not require all lessees or designees in a marginal property to seek the same form of relief.

MMS believes that this approach implements Congress' intent under RSFA section 7(c) of providing accounting and auditing relief for marginal properties to encourage lessees or their designees to produce and develop properties. Moreover, requiring all interest owners of a marginal property to unanimously seek one agreed-upon form of relief would be an unnecessary burden.

Section 204.202 What Accounting and Auditing Relief Options Are Available to Me?

This section would show you the six accounting and auditing relief options you may take for properties that qualify as marginal under § 204.4 and where in this subpart you can obtain more information.

Section 204.203 What Is the Cumulative Royalty Reports and Payments Relief Option?

This section would explain the ''cumulative royalty reports and payments relief option.'' Under this relief option, you would be allowed to submit royalty reports and payments less often than monthly. This relief option would reduce administrative costs by decreasing the total number of reports and payments you must submit and MMS must process.

Paragraph (a) would explain how to determine whether you may submit royalty reports and payments less often than monthly based on the production levels from your lease during the base period. Less production would allow you to report and pay your royalties to MMS less often. Thus, for a qualifying marginal property, you could submit your royalty reports and payments as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or allocable to each lease during the base period;

(2) You would total the volumes calculated under subparagraph (a)(1) of this section; and

(3) You would determine your level of relief according to the following table:

If the total volume calculated under paragraph (a)(2) of this section is	Then you may report and pay your royalties
(i) 125 or fewer barrels of oil equivalents	Annually, Semi-annually, or Quarterly.
(ii) More than 125, but not more than 250 barrels of oil equivalents	Semi-annually or Quarterly.
(iii) More than 250, but not more than 500 barrels of oil equivalents	Quarterly.

For example, assume the qualifying marginal property was an Agreement consisting of three leases each with combined equivalent production of 1,000 barrels of oil during the base period, and your lease ''A'' was Federal with a ⅛ royalty rate, and lease ''B'' was Federal with a ⅛ royalty rate, and lease ''C'' was a fee lease. Under paragraph (a)(1), if you wanted relief under this option, you would multiply 1,000 times ⅛ for leases ''A'' and ''B'', which equals 125 barrels each. Under paragraph (a)(2), you would add 125 plus 125 for a total of 250 barrels of oil. The 250 barrels is the number you would then use to determine what level of relief you could take under paragraph (a)(3). In this example, you would be eligible to report and pay your royalties semi-annually or quarterly.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Paragraph (c) would explain that you must submit your report and payment by the end of the month following the end of the applicable quarterly, semi-annual, or annual reporting period. This paragraph would also explain that you must report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014, for the reporting period, the same as you would on a monthly basis. In addition, you would be required to use the last sales month of the reporting period to report the royalty information for that entire period.

Paragraph (d) would explain that if you do not pay your royalty by the date due in paragraph (c)(1) of this section, you would owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. For example, if you notify MMS under § 204.210(a) that you qualify to report and pay royalties quarterly, and MMS receives your payment on May 15 for the first calendar quarter, instead of April 30, as required under paragraph (c) of this section, you will owe late payment interest from May 1 through May 15 on that late payment.

Under paragraph (e), if you qualify for relief under paragraph (a) of this section, but you take more relief than you are entitled to under that paragraph, you would owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. For example, if you qualify to report and pay royalties quarterly, and, instead you report and pay semi-annually, you would owe late payment interest from the date your quarterly payment was due until MMS receives your semi-annual payment. MMS also will require you to amend your Form MMS–2014 to reflect the proper reporting frequency. MMS will then assess you for any resulting late payment interest.

Paragraph (f) would provide that you must report allowances on the same quarterly, semi-annual, or annual basis as the royalties for your marginal property on Form MMS–2014. This is necessary for MMS to properly associate the allowances you are deducting on Form MMS–2014 with the royalties that you pay.

Paragraph (g) would explain when during the calendar year you must report and pay royalties. Thus, under this relief option:

(1) Quarterly reporting periods would begin on the first day of January, April, July, or October;

(2) Semi-annual reporting periods would begin on the first day of January or July;

(3) Annual reporting periods would begin on the first day of January.

Paragraph (h) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option. These guidelines are being developed.

Section 204.204 What is the Net Adjustment Reporting Relief Option?

This section would explain the ''net adjustment reporting relief option.'' Under this relief option, you could adjust previously reported royalty lines to MMS as a one-line net entry on the Form MMS–2014, instead of the required two-line adjustment process. Under the two-line adjustment process, you must reverse the original report line and report a corrected line on Form MMS–2014. MMS proposes to allow this relief option based on the volume of production from the marginal property. This relief option would reduce administrative costs by decreasing the total number of lines you must report and MMS must process.

Paragraph (a) would explain how to determine whether your qualifying marginal property is eligible for relief under this option as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or attributable to each lease during the base period;

(2) You would total the volumes calculated under subparagraph (a)(1) of this section;

(3) If the total volume you calculated under paragraph (a)(2) is equal to or less than 2,500 barrels of oil equivalents, then your property would be eligible for relief under this option. Using the same example as that under § 204.203(a), where the total volume calculated for the qualifying marginal property was 250 barrels of oil equivalents, your property would be eligible for this relief option.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Under paragraph (c), you could not net adjustments for royalties due with adjustments for allowances on Form MMS–2014. Thus, you would have to report an adjustment to a previously reported royalty due line as a one-line net entry and report any corresponding adjustment to your previously reported allowance line as a separate one-line net entry. For example, if you originally reported $1,000 royalty due with an allowance of $100 and needed to adjust them to $1,200 and $120, respectively, you would report two separate adjustment lines—one line reporting additional royalty due of $200 and another line claiming an additional allowance of $20.

Paragraph (d) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

Section 204.205 What Is the Rolled-up Reporting Relief Option?

This section would explain the ''rolled-up reporting relief option.'' Under this relief option, you could report all selling arrangements for a revenue source to MMS under a single selling arrangement line on Form MMS–2014. MMS proposes to allow this relief option based on the volume of production from the marginal property. This relief option would reduce administrative costs by decreasing the total number of lines you must report and MMS must process. For example, if you currently report royalties under 3 separate selling arrangement lines for a lease and revenue source, you could combine them into a single report line under any one of your existing selling arrangements.

Paragraph (a) would explain how to determine whether your qualifying marginal property is eligible for relief under this option as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or attributable to each lease during the base period;

(2) You would total the volumes calculated under paragraph (a)(1) of this section;

(3) If the total volume you calculated under paragraph (a)(2) is equal to or less than 1,000 barrels of oil equivalents, then your property would be eligible for relief under this option. Using the same example as that under § 204.203(a), where the total volume calculated for the qualifying marginal property was 250 barrels of oil equivalents, your property would be eligible for this relief option.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Paragraph (c) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

Section 204.206 What Is the Alternate Valuation Relief Option?

This section would explain the ''alternate valuation relief option.'' Under this relief option, you could request to report and pay royalties using a valuation method other than that required under 30 CFR part 206. MMS anticipates that you would propose a simplified valuation method because it would reduce administrative costs.

Paragraph (a) would state that any alternate valuation method that you propose:

(1) Must be readily determinable and certain; and

(2) Must approximate royalties payable under the valuation regulations in 30 CFR part 206.

An example that MMS and the State might find acceptable is when the marginal property is located in an area with an active spot market that has reliable, published index prices. The use of the index price along with a reasonably based location differential could be acceptable based on the particular circumstances of the property if MMS's economic analysis showed that royalties paid using the location-adjusted index price would remain relatively unchanged from those paid under 30 CFR part 206.

Paragraph (b) would explain that you must obtain approval from MMS and the State under § 204.210(b) before taking alternate valuation relief. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you may not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (c) would explain that if MMS and the State approve your request, the valuation method you requested would be the value for royalty purposes for production from or attributable to your lease interest in the marginal property. Thus, you would no longer value your production under 30 CFR part 206 and any underpayment would be determined based on the approved alternative valuation method.

Paragraph (d) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.207 What Is the Audit Relief Option?

This section would explain the ''audit relief option.'' Under this relief option, you could request a reduced royalty audit burden. However, MMS would not consider any request that eliminates

MMS's or the State's right to audit. The reduced audit burden would reduce the administrative costs associated with audits.

(a) Audit relief may include:

(1) Audits of limited scope. For example, MMS and the State may accept, under certain conditions, that an audit of a particular marginal property would not occur more frequently than once in every 6-year period unless previous audits have resulted in royalty underpayments;

(2) Coordinated royalty and severance tax audits. For example, MMS and the State may accept, under certain conditions, that the State will perform audits of royalty records for a marginal property at the same time as the State's audit of severance taxes;

(3) Reliance by MMS on independent certified audits. For example, the MMS and the State, under certain conditions may accept an affirmative statement in the audit report of the company's independent certified auditors that they have reviewed the company's royalty accounting practices with respect to marginal properties and found them to be in compliance with Federal lease terms, laws, and regulations. MMS may retain the right to review the support for such certification;

(4) Any other audit relief which may be appropriate. MMS and the State will determine on a case by case basis whether the audit relief you request is appropriate.

Paragraph (b) would explain that you must obtain prior approval from MMS and the State under § 204.210(b) before receiving audit relief. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you could not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (c) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.208 What Is the Other Relief Option?

This section would explain the ''other relief option.'' Under this relief option, you could request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not specifically prohibited under § 204.209 of this subpart. MMS proposes this ''other relief option'' because it recognizes that no one kind of relief is appropriate for every marginal property. MMS and the State would determine on a case by case basis whether the other relief option you request is appropriate.

Paragraph (a) would explain that you must obtain prior approval from MMS and the State under § 204.210(b) before taking relief under this option. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you could not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (b) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.209 What Accounting and Auditing Relief Will MMS Not Allow?

This section would explain that MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit. MMS developed an audit strategy to assure compliance with laws, regulations, and lease terms. To administer this strategy, MMS and the States must audit a sample of leases consisting of a wide range of conditions. Therefore, MMS proposes to deny any relief requested under this subpart that prevents it or a State from conducting an audit of a marginal property. However, as provided in § 204.207, we would consider applications that provide for reduced or streamlined audit coverage under appropriate circumstances;

(b) Permanently relieves you from making future royalty reports or payments. MMS believes that RSFA's requirement that any relief option must increase net receipts to the United States and the States prohibits this as a relief option. Applicants who wish to alter their monthly royalty payments should explore the cumulative royalty report and payment relief option under § 204.203 or the prepayment of royalty alternative under subpart B of this part;

(c) Provides for less frequent royalty reports and payments than annually. Annual royalty information is necessary to monitor the continuing eligibility of marginal properties;

(d) Provides for you to submit royalty reports and payments at separate times. MMS must disburse the royalty revenues it receives on a timely basis. Therefore, the royalty payment and the royalty report must be submitted together under any relief proposal;

(e) Impairs MMS's ability to properly or efficiently account for or disburse royalties. MMS must have sufficient royalty information to effect disbursement to the States and other revenue recipients. Thus, it would reject any proposal that lacks that information;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind. Because the royalty obligation is satisfied by the Federal Government taking its royalty in-kind, accounting or auditing relief to the lessee or its designee is not necessary;

(g) Alters production reporting requirements. Although MMS proposes to allow fractional interest owners of qualifying marginal properties to seek individual relief under this subpart, we believe production information must be submitted on a monthly basis for the entire marginal property. This is necessary so that MMS and other agencies can continue to monitor production from the property;

(h) Alters lease operation or safety requirements. MMS does not believe RSFA contemplated relief of this nature;

(i) Conflicts with rent, minimum royalty, or lease requirements. The lessee or its designee must satisfy the rent, minimum royalty, and other lease obligations regardless of any marginal property relief. Therefore, any relief option which would reduce or eliminate the lease obligations will not be allowed;

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.214 of this subpart.

Section 204.210 How Do I Obtain Accounting and Auditing Relief?

This section would explain how to notify MMS that you are taking, or request from MMS authorization to take, the relief options under this subpart.

Paragraph (a) would explain that to take accounting relief under §§ 204.203, 204.204, and 204.205, you must notify MMS in writing prior to the first day of the sales month for which you begin taking your relief. MMS believes that the notification required under paragraph (a) of this section allows MMS and the State to jointly determine whether to grant relief on a ''case-by-case'' basis, as required under RSFA section 7(a), for three reasons.

First, the rule itself would set forth which ''cases'' are eligible for relief under §§ 204.203, 204.204, and 204.205. Second, States have the opportunity to comment on the proposed eligibility requirements in this proposed rulemaking, and MMS will work with the States to develop the eligibility requirements in the final rule. Finally, States who disagree with the eligibility requirements may decide not to grant any relief under § 204.214 of this subpart.

MMS requires notification prior to taking relief under paragraph (a) of this section in order to enter the information into MMS's accounting system. This will prevent MMS's automated systems from generating spurious exceptions on marginal properties for which relief is being taken.

MMS would like comments on whether the relief options under §§ 204.203, 204.204, and 204.205 should be automatic, *i.e.* not require prior approval based on production levels, as proposed in the notification requirement under paragraph (a) of this section.

Paragraph (a)(1) would list the information that must be supplied in the notification.

Paragraph (a)(2) would explain that you may file a single notification for multiple marginal properties if you are taking the same relief option with the same effective date for all the properties. As an example, assume that a lessee or its designee's marginal property ''A'' qualifies under the § 204.203 ''cumulative royalty reports and payments option'' for semi-annual reporting and payment, and its marginal property ''B'' qualifies under the § 204.203 ''cumulative royalty reports and payments option'' for annual reporting and payment as well as the ''net adjustment reporting relief option'' under § 204.204. The lessee or its designee could submit a single notice to MMS that it is taking the ''cumulative royalty reports and payments option'' for both properties ''A'' and ''B'' if the effective date for the relief were the same for both properties. However, the lessee or its designee would have to submit a separate notice to MMS that it is taking the ''net adjustment reporting relief option'' for property ''B''.

Paragraph (b) would explain that if you wish to obtain accounting or auditing relief under §§ 204.206, 204.207, and 204.208, you must file a written request for relief with MMS. Accordingly, you must obtain MMS's prior approval before taking relief under these sections. MMS believes that the requests required under § 204.210(b) allow MMS and the State to jointly determine whether to grant relief on a ''case-by-case'' basis, as required under RSFA, for four reasons.

First, MMS and the State, if applicable, would consider each request to determine whether you are eligible for the relief options under §§ 204.206, 204.207, and 204.208. Second, States have the opportunity to comment on the proposed request requirements in this proposed rulemaking, and MMS will work with the States to develop the request requirements in the final rule. Third, under the proposed rulemaking, MMS and the State, if applicable, would jointly determine whether a property is eligible for the relief options under §§ 204.206, 204.207, and 204.208. Finally, States who disagree with the request requirements or relief option(s) may decide not to grant any relief under § 204.214 of this subpart.

Paragraph (b)(1) would list the information that must be supplied in your request.

Under paragraph (b)(2) you could file a single request for multiple marginal properties if you are requesting the same relief for all properties. As an example, assume that a lessee or its designee's marginal property ''A'' qualifies for the ''alternate valuation relief option'' under § 204.206, and marginal property ''B'' qualifies for the ''alternate valuation relief option'' under § 204.206 as well as the ''audit relief option'' under § 204.207. The lessee or its designee could submit a single request to MMS asking to take the ''alternate valuation relief option'' for both properties ''A'' and ''B''. However, the lessee or its designee would have to submit a separate request to MMS to ask to take the ''audit relief option'' for property ''B''.

Paragraph (b)(3) would explain that you must remit a processing fee in the amount of $50 for requests for accounting or auditing relief under §§ 204.206, 204.207, and 204.208. MMS is recovering its costs under the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701 *et seq.* (IOAA), for Federal offshore leases, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 (FLPMA), for Federal onshore leases. Thus, as part of this proposed rulemaking, we analyzed the proposed marginal property relief's cost recovery fees for reasonableness according to the factors in FLPMA Section 304(b). Although the IOAA does not contain the same ''reasonableness factors'' as FLPMA Section 304(b), the factors MMS considered under the IOAA to determine reasonable fees led it to conclude that the fees for offshore leases should be the same as that for onshore leases.

The ''reasonableness factors'' which FLPMA requires to be considered are: (a) actual costs (exclusive of management overhead); (b) the monetary value of the rights or privileges sought by the applicant; (c) the efficiency to the Government processing involved; (d) that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant; (e) the public service provided; and (f) other factors relevant to determining the reasonableness of the costs.

For marginal property relief taken or requested under § 204.210, the method used to evaluate the factors is twofold. First, actual costs are estimated and each of the remaining FLPMA reasonableness factors (b) through (f) is evaluated individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, that factor is then weighed against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate the contemplated reduction. On the basis of this twofold analysis, MMS determined what final fee is reasonable for the marginal property relief sought. MMS cannot recover an amount greater than its actual costs, so any final adjustment cannot result in a fee greater than actual costs.

For processing a notice that a lessee or its designee is taking marginal property relief under § 204.210(a), we concluded that we would not charge fees because it is exempted from cost recovery under the Department of the Interior Manual (DM). Under the Departmental Manual, agencies may exempt activities from cost recovery if ''[t]he incremental cost of collecting the charges would be an unduly large part of the receipts from the activity.'' 346 DM 1.2 C (2). Based on our analysis, we estimated that our actual costs for processing these notices would be less than $5.00. However, the increased cost to MMS for billing and collecting a processing fee would be $8.00 (estimated by the Department of the Interior Director of Financial Management in 1991). Therefore, for processing a lessee's or its designee's notice to take marginal property relief under § 204.210(a), we concluded that this is an activity exempt from cost recovery under the Departmental Manual. 346 DM 1.2 C(2). Because we do not propose to recover costs to process notifications under § 204.210(a), the balance of the discussion on cost recovery will focus on processing fees for requests under § 204.210(b).

Factor (a)—Actual Costs. Actual costs means the financial measure of resources expended or used by MMS in processing a notice that a lessee or its designee is requesting to take marginal property relief under § 204.210(b), including, but not limited to, the costs of special studies, monitoring compliance with this part, termination of relief authorized under this part, or any other relevant action. Actual costs include both direct and indirect costs, exclusive of management overhead. Management overhead costs means costs associated with the MMS directorate, which means the entire Washington office staff, except where a member of such staff is required to perform work on a specific case. Section 304(b) of FLPMA requires that we exclude management overhead from chargeable costs.

Direct costs include agency expenditures for labor, material, stores, and equipment usage connected with the performance of processing responsibilities. MMS's indirect costs include program support such as systems, appeals, enforcement, and rulemaking. Indirect costs are allocated to specific projects on a pro rata basis. MMS calculated its indirect cost rate of 18.5 percent by dividing the support costs described above by the total program costs. This method of calculating costs is a generally accepted practice in both the private and public sectors.

MMS's method of establishing actual costs involved measuring the cost of an individual transaction within a relief category. MMS concluded that measuring the cost of an individual transaction within a relief category is reasonable because the actual costs will not vary substantially from one individual transaction to another within the same relief category, making the average cost of an individual transaction a reliable measure. In this proposed rulemaking, MMS determined that the above characteristic is exhibited by all relief categories. Each of these is discussed below.

The costs to process a lessee or its designee's request to take the ''alternative valuation relief option,'' the ''audit relief option,'' and the ''other relief option,'' under § 204.210(b), would include the cost to process the request. This consists of several phases. The first phase is the review and analysis of the proposed relief by MMS personnel and our preliminary approval, modification, or denial of the proposed relief. The second phase involves the coordination with the affected State. The third phase consists of communicating the decision to the lessee or its designee. MMS has determined that the average burden hour estimate to the Federal Government for these phases is 40 hours per request. This estimate is based on current MMS time requirements for completing similar tasks. Using an estimate of $50 per hour based on an average of MMS's personnel costs, we estimate the average direct cost burden for these requests is $2,000 ($50/hour x 40 hours). MMS's indirect costs for the requests is $370 per request (18.5 percent indirect cost rate x $2,000) resulting in total estimated actual costs of $2,370 per average request.

If a request is approved, additional phases are necessary. In the data entry phase, MMS personnel enter the approval information the lessee or its designee submits with its request into MMS's automated systems. MMS personnel then file the original request for future reference. In the monitoring phase, MMS would monitor the marginal property annually to ensure that it continues to qualify for the relief granted. MMS estimates that the time necessary to complete both of these phases is negligible. Therefore, we have not included any additional costs from these phases into our actual cost estimate.

Factor (b)—Monetary Value of the Rights and Privileges Sought. The monetary value of rights and privileges sought means the objective worth of the marginal property relief sought or taken, in financial terms, to the lessee or its designee. MMS rejected the idea of trying to calculate monetary value on a case-by-case basis as too time-consuming, wasteful of resources, and subject to endless disputes. Instead, MMS has attempted to calculate an actual figure to represent the monetary value of rights for transactions in this rulemaking. In addition, MMS took into account equitable considerations involving the costs to process relative to the monetary value of the relief sought.

MMS determined that the ''alternative valuation relief option'' and ''audit relief option'' would benefit lessees and their designees by decreasing the total number of hours they must devote to calculating royalty payments and responding to MMS audits. MMS estimated the maximum average monetary benefit of these relief options could be as high as $1,200 annually (2 hours per month savings x 12 months x $50/hour labor cost). However, MMS did not upwardly adjust its actual costs for this factor. As discussed under factor (f) below, if MMS increased its costs due to this factor, it would frustrate Congress' intent under RSFA to promote continued production. This is because lessees and their designees would not request relief if MMS's recovery costs are excessive.

Second, the lessee or its designee receives the value of continued production and the resultant continued income from the property. However, any MMS estimate of the average life of a marginal property and the average monetary benefit from continued production to the lessee or its designee would be purely speculative. In addition, this equitable factor would be offset by the increased royalties the public would receive as discussed under factor (e) below. Therefore, MMS did not upwardly adjust its actual costs based on this factor.

MMS has reviewed the request-based relief options proposed in this rulemaking and found them to have significantly higher processing costs/fees than the monetary value of the right being provided to the customer. MMS has determined that consideration of this factor should also include an examination of equitable considerations related to monetary value, rather than precise figures, which would be very difficult or impossible to calculate. A major equitable consideration is whether the level of cost reimbursement could, as a result of the expense required to process the fee itself for example, burden the applicant to such an extent that the proposed relief would actually grant no relief at all. Relief with a small value to the applicant, but which triggers higher processing costs, would be an example of an instance where the fee might reasonably be set at a figure less than the actual cost of processing due to this factor.

Factor (c)—Efficiency to the Government Processing Involved. Efficiency to the Government processing means the ability of the United States to process a request to take marginal property relief under § 204.210(b) with a minimum of waste, expense, and effort. Implicit in this factor is the establishment of a cost recovery process that does not cost more to operate than MMS would collect and does not unduly increase the costs to be recovered. As noted in the above section on actual costs, MMS has determined that for the relief options proposed in this rulemaking, it would be inefficient to determine actual cost data on a case-by-case basis. Estimates based on MMS experience indicate that the cost of maintaining actual cost data on specific cases is unreasonably high where the amount potentially collectible is relatively small. This is principally because MMS's automated accounting system would have to be extensively reprogrammed to add a relatively few items of information. MMS has thus used cost estimates derived from collected data.

Because RSFA requires that any relief granted be in the best interests of the United States and the State concerned, MMS must perform sufficient review of the unique circumstances involving each individual marginal property for which relief is being requested. MMS believes the 40-hour actual cost estimate from factor (a) above anticipates an efficient process that provides for the necessary technical review and State coordination functions. The procedures that MMS will use in processing the data would be based on standardized steps for similar MMS transactions in order to eliminate duplication and extraneous procedures. Therefore, MMS believes this would be the most efficient processing method. Accordingly, because this is an efficient processing method, MMS has made no adjustment to actual costs as a result of this factor.

Factor (d)—Cost Incurred for the Benefit of the General Public Interest. The cost incurred for the benefit of the general public interest (public benefit) means funds the United States expends in connection with the processing of a request to take marginal property relief under § 204.210(b), for studies and/or data collection determined to have value or utility to the United States or the general public separate and apart from the document processing. It is important to note that this definition addresses funds expended in connection with a request. There is another level of public benefit that includes studies which MMS is required, by statute or regulation, to perform regardless of whether a request is received. The costs of such studies are excluded from any cost recovery calculations from the outset. Therefore, no additional reduction from costs recovered is necessary in relation to these studies.

MMS analysts concluded that the processing of requests for relief included in this proposed rulemaking did not as a rule produce studies or data collection that might benefit the public to any appreciable degree. Therefore, any possible benefits of such studies to the public are balanced by their possible benefits to the applicant. Accordingly, MMS made no adjustment to the fee recovered based on this factor.

Factor (e)—Public Service Provided. Public service provided means tangible improvements or other direct benefits, such as increased royalty and prolonged production, and reduced administrative costs, with significant public value that are expected in connection with the granting of marginal property relief. Data collection that MMS needs to monitor marginal property relief granted or taken does not constitute a public service. The definition specifically notes that negative factors, such as an adverse impact on royalty or MMS's audit ability, may preclude considering an improvement as a public service and that data collection MMS needs to monitor a relief option does not constitute a public service. This definition distinguishes the factor of ''public service provided'' (a benefit resulting from activities associated with the underlying relief) from the factor of ''costs incurred for the benefit of the general public interest'' (which relates to benefits of the document processing itself). MMS has determined that the relief options under this rule provide several public services.

First, for the ''alternative valuation relief option'' and ''audit relief option,'' MMS receives the benefit of reducing its costs by decreasing the total number of hours it must devote to auditing. MMS anticipates approving simpler valuation and audit methods under this rule. Therefore, MMS has determined that the Government would benefit under this factor to some extent.

Most audits of marginal properties performed by MMS or State auditors are conducted in conjunction with audits of larger producing leases that the lessee or designee reports and pays royalties on. MMS and State auditors do not spend significant resources on conducting audits of the marginal properties, instead concentrating the audit effort on the larger leases. Therefore, MMS has determined that the audit savings would be relatively minor along with the resulting public benefit. Because the following reasonableness factor already reduces the fee charged well below MMS's actual costs, MMS has not further reduced actual costs as a result of these minor audit savings.

Second, it is possible that the granting of marginal property relief may extend the life of a lease, and thereby extend the United States' receipt of royalties from those properties. As discussed below, that was one of Congress' goals when enacting RSFA. However, any increased receipts are purely speculative. Moreover, any such continued royalty payments from such a property would most likely be nominal, and thus outweighed by the costs of processing and auditing such payments. Therefore, MMS concluded that the benefit to the Government would be too remote and speculative to warrant any reduction in the fee charged.

Factor (f)—Other Factors. The final reasonableness factor is other factors relevant to determining the reasonableness of the costs. MMS examined the relief options to determine whether other factors warranted a reduction in the proposed fee.

MMS's primary consideration under this factor was RSFA's purpose with respect to marginal properties. Congress enacted RSFA to ''promote production,'' RSFA section 7(a), by ''encourag[ing] lessees to continue to produce and develop marginal properties.'' S. Rep. 260, 104th Cong., 2d Sess. 20 (1996); H.R. 667, 104th Cong., 2d Sess. 20 (1996). Congress stated that ''certain regulatory * * * obligations should be waived if it can be demonstrated such a waiver could aid in maintaining production that might otherwise be abandoned.'' H.R. 667, 104th Cong., 2d Sess. 20 (1996). However, RSFA also mandated that any relief should ''reduce administrative costs, and increase net receipts to the United States and the States.'' RSFA section 7(a). Congress stated that granting relief for marginal properties should ''result in additional receipts from oil and gas production that would otherwise be abandoned, and would * * * increase oil and gas production on Federal lands by creating economic efficiencies to make Federal leases more competitive with private leases.'' *Id.* at 20–21. Thus, as part of its FLPMA reasonableness analysis, MMS was required to consider whether the benefit from the increase in royalties to be gained from continued production from marginal properties and the decreased administrative burden to MMS from granting such relief merited a reduction in fee charges.

The relief options proposed in this rulemaking were therefore reviewed by MMS personnel with expertise and program management responsibilities in the particular area of the transaction, who weighed the proposed processing fee against their knowledge of the value of similar transactions. In the case of the relief options proposed in this rulemaking, the MMS analysts concluded that the value of the rights was clearly so far below the expected processing cost that a fee set at actual costs would preclude lessees or their designees from seeking those relief options. In fact, at MMS's marginal property workshops, industry representatives indicated that significant processing fees would likely result in requests for relief not being submitted. Representatives of independent oil and gas producers stated that processing fees would likely discriminate against the small producers because larger oil and gas producers often sell properties that approach marginal status to the smaller producers. Thus, setting a fee at actual costs would frustrate Congress' stated purpose under RSFA to promote continued production and increase administrative efficiency because lessees and their designees would decline to request such relief. Accordingly, MMS placed the greatest weight on this factor when considering the reasonableness of charging actual costs. As a result, MMS has determined that a processing cost of $50 would meet the reasonableness factors of FLPMA for onshore leases and further Congressional intent to provide marginal property relief for requests under §§ 204.206, 204.207, and 204.208.

MMS invites specific comments concerning the proposed processing fees. MMS further requests input concerning the value to marginal property lessees and designees of the relief options under §§ 204.206, 204.207, and 204.208 of this subpart.

Paragraph (b)(3) would require you to remit a processing fee in the amount of $50 for each request for marginal property relief. If you file a single request for multiple marginal properties as provided in paragraph (b)(2), your processing fee is $50 for the entire request. Thus, under the example in paragraph (b)(2) of this section, for the single request filed to request the ''alternate valuation relief option'' for both properties ''A'' and ''B'', you must remit a total of $50.

Paragraph (b)(3)(i) would explain that if you do not remit the processing fee with your request for relief, MMS will return your request for relief unprocessed. If MMS returns your request unprocessed it is not considered an appealable denial of your request.

Paragraph (b)(3)(ii) would explain that if you remit a partial processing fee, your request for relief will not be processed until you pay the processing fee in full. Thus, under the example in paragraph (b)(3) of this section, if you remit $30 with your request for both properties ''A'' and ''B'', rather than the $50 required under that section, MMS will not process your request until you remit the additional $20. This paragraph would also provide that MMS will notify you in writing that your processing fee is insufficient. You would have 30 days from your receipt of MMS's notice to remit the balance. If you did not remit the balance within the 30-day period, MMS would return your request for relief unprocessed. If MMS returned your request unprocessed, it would not be considered an appealable denial of your request.

Paragraph (b)(3)(iii) would provide that processing fees, including partial processing fees, are not refundable for any reason. Accordingly, under the example in paragraph (b)(3)(ii), if you did not remit the additional $20 within the 30-day period, MMS would not refund the $30 partial payment you remitted.

Paragraph (b)(3)(iv) would refer you to MMS's Marginal Property Guidelines for additional instructions on submitting processing fees.

Paragraph (c) would provide that you must submit notifications, requests, or processing fees required under this section to the address specified in MMS's Marginal Properties Guidelines.

Section 204.211 What Will MMS Do When It Receives My Request for Accounting and Auditing Relief?

The section would explain that when MMS receives your request for accounting and auditing relief under § 204.210(b), it will notify you as follows:

Paragraph (a) would provide that if your request for relief is complete, MMS and the State may either approve, deny, or modify your request. MMS would notify you of the decision in writing under § 204.215 of this subpart.

Paragraph (b) would provide that if your request for relief is not complete, MMS would notify you in writing that your request is incomplete and identify any missing information. You would have to submit the missing information within 30 days of your receipt of MMS's notice that your request is incomplete.

Under paragraph (1), if you submit the missing information within 30 days of MMS's notification, MMS and the State could either approve, deny, or modify your request for relief under § 204.213 of this subpart.

Under paragraph (2), if you do not submit the missing information within 30 days, MMS would return your request for relief as incomplete. If MMS returns your request because it is incomplete, MMS would not return any processing fee you submitted with your request. You could submit a new request for relief under this subpart, including another processing fee, at any time following MMS return of your incomplete request. If MMS returns your request unprocessed, it would not be considered an appealable denial of your request.

Section 204.212 Who Will Decide Whether To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

Because RSFA requires MMS to determine whether to approve relief for marginal properties jointly with a State concerned, the section would explain who will decide your request for relief depending on whether there is a State concerned.

Paragraph (a) would provide that if there is not a State concerned for your marginal property, only MMS would decide whether to approve, deny, or modify your relief request.

Paragraph (b) would provide that if there is a State concerned for your marginal property, the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated would have to jointly determine with MMS whether to approve, deny, or modify your relief request. Also, the State would be required to provide MMS with the identity of the State official with this authority.

Paragraph (c) would provide that MMS will not approve your request to use an alternate valuation method until the Assistant Secretary for Land and Minerals Management approves the request.

Section 204.213 How Will MMS and the State Jointly Determine Whether To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

This section would explain the process MMS and the State will use to jointly decide whether to approve, deny, or modify your request for relief under § 204.210(b).

If a State determines in advance that it may grant one or more of your relief options under this subpart:

Paragraph (a) would provide that MMS will preliminarily determine whether to approve, deny, or modify your relief request and send its preliminary determination to the State. RSFA provides that the State must consent to accounting and auditing relief granted under section 117(c) of FOGRMA. Thus, RSFA requires the involvement of the State in the approval process for a marginal property relief alternative under this subpart. Accordingly, MMS proposes that after its preliminary approval, denial, or modification(s) of a relief request, it would forward the request and its preliminary determination to the appropriate State for concurrence;

Paragraph (b) would provide that after the State receives MMS's preliminary determination, it must notify MMS in writing within 30 days, or such longer period as MMS may allow, of its recommendation to approve, deny, or modify your relief request under § 204.210(b);

Under paragraph (1), if the State approved your relief request:

(i) MMS would approve your relief request if its preliminary determination was to approve your request;

(ii) MMS could either approve or deny your relief request if its preliminary determination was to deny your request. This would give MMS the flexibility to revise its preliminary determination to deny your request if, after consultation with the State, it agreed with the State that your request should be approved;

Under paragraph (2), if the State denied your relief request, then MMS would deny your relief request because RSFA provides that States must consent to any relief;

Under paragraph (3), if the State approved MMS's modification(s) to your relief request, MMS would modify your relief request;

Under paragraph (4), if the State denied MMS's modification(s) to your relief request, MMS would deny your relief request, because RSFA provides that States must consent to any relief;

Under paragraph (5), if the State modified your relief request, MMS would consider the modification(s) and would:

(i) Modify your request if it approves the State's modification(s); or

(ii) Deny your request if it disagrees with the State's modification(s);

Paragraph (c) would provide that if the State does not notify MMS of its decision within the time period allowed under paragraph (b) of this section, then the State would be deemed to have agreed with MMS's preliminary determination. Because MMS could allow States additional time to decide whether to approve, deny, or modify your request under paragraph (b) of this section, MMS believes that this provision is reasonable and necessary in order to assure timely processing of requests.

Section 204.214 May a State Decide in Advance That It Will Not Allow Certain Relief Options Under This Subpart?

Paragraph (a) would provide that a State may decide in advance that it will not allow any one or more of the relief options specified in this subpart. MMS proposes to allow States to deny some or all of the relief options under this subpart in advance because RSFA provides that States must consent to any relief requested. MMS is also allowing States to deny relief in advance because some State government organizations who participated in the meetings of October 31, 1996, and January 23, 1997, regarding this proposed rule expressed concerns about granting relief for marginal properties. Finally, MMS believes this is the most efficient means to prevent you from submitting requests, and MMS and the State from processing requests, which States will automatically deny.

If a State decides it wants to deny relief in advance, the highest State official having royalty collection authority would be required to:

(1) Notify MMS in writing no later than 90 days prior to the beginning of the applicable calendar year of the State's intent to disallow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will not allow.

Paragraph (b) would provide that a State that had previously decided to not allow some or all relief under this subpart, may later allow such relief. The State would have to:

(1) Notify MMS in writing no later than 90 days prior to the beginning of the applicable calendar year of its intent to allow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

Paragraph (c) would provide that MMS would publish the State's notice of intent to disallow or to allow certain relief options under this section in the **Federal Register** no later than 60 days prior to the beginning of the applicable calendar year. This would notify lessees or their designees whether or not they should submit the notices or requests required under § 204.210 for relief the State has denied in advance.

Section 204.215 How Will MMS Notify Me of the Decision To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

This section would explain that MMS will notify you in writing of the decision on your request for accounting and auditing relief under § 204.210(b).

Under paragraph (a), if MMS and the State approve your request for relief, MMS would notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

Under paragraph (b), if MMS and the State deny your relief request, MMS would state the reasons for denial in its notice informing you of its decision and explain your appeal rights under § 204.6.

Under paragraph (c), if MMS and the State modify your relief request, you would have 30 days from your receipt of MMS's modification notice to either accept or reject any modification(s) in writing. If you reject the modification(s) or fail to respond to MMS's notice, MMS and the State would deny your relief request. MMS would state the reasons for denial in its notice informing you of its decision and explain your appeal rights under § 204.6.

Section 204.216 What Other Guidance Is Available for Accounting and Auditing Relief Obtained Under This Subpart?

This section would explain that MMS will provide additional guidance for accounting and auditing relief in MMS's Marginal Property Guidelines. MMS anticipates using these Marginal Property Guidelines to provide detailed reporting instructions, such as unique adjustment reason codes and transaction codes, for marginal property reporting on Form MMS–2014. The Marginal Property Guidelines would also provide addresses for submitting notifications, requests, processing fees, reports, and payments for marginal properties.

Section 204.217 What If My Property Ceases To Qualify for Relief Obtained Under This Subpart?

This section would explain what happens if your property no longer qualifies for relief under this subpart because your production increased during the base period.

Paragraph (a) would provide that you must qualify for relief under this subpart for each calendar year based on production during the base period. The notice or request you provided to MMS under § 204.210 for the first calendar year that you qualified for relief will remain effective for successive calendar years if you continue to qualify. For example, if you qualified for relief beginning in calendar year 2000, and if you continue to qualify in calendar year 2001, based on the period from October 1, 1999, through September 30, 2000, you need not submit a new notice or request for calendar year 2001.

Paragraph (b) would provide that if you find you are no longer eligible for relief because your production increased in the most recent base period, your relief terminates as of December 31 of that calendar year. By December 31, you would have to notify MMS in writing at the address provided in MMS's Marginal Property Guidelines that your relief has terminated. For example, if you qualified for relief beginning in calendar year 2000, but no longer continue to qualify in calendar year 2001 because your production increased during the base period, you must notify MMS by December 31, 2000, that your relief has terminated.

Paragraph (c) would provide that MMS may retroactively rescind your relief, if MMS determines that your lease was not eligible for the relief you obtained under this subpart because:

(1) You did not submit a notice or request for relief under § 204.210;

(2) You submitted erroneous information in the notice or request for

relief you provided to MMS under § 204.210 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under paragraph (b) of this section.

Paragraph (d) would provide that you may owe additional royalties and will owe late payment interest determined under part 218 of this title from the date your payment was due until the date MMS receives it.

Section 204.218 May I Obtain Accounting and Auditing Relief for a Marginal Property That Benefits From Other Federal or State Incentive Programs?

This section would provide that you may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs. There is no evidence in RSFA or the legislative history that Congress intended for the marginal property relief provisions of FOGRMA section 117(c) to subrogate other relief programs.

III. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this proposed rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule implements the alternatives for marginal properties as required under sections 117(a) and 117(c) of the Federal Oil and Gas Royalty Management Act of 1982, as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

This proposed rule provides significant potential savings to all Federal oil and gas lessees and designees, regardless of size, by providing optional accounting and auditing relief. If a small entity does not wish to avail itself of the optional relief, it will incur no expense or burden under the proposed rule. If a small entity does seek to avail itself of accounting or auditing relief provided for in the proposed rule, it will incur nominal expenses. The benefit that would be obtained by the small entity would outweigh these nominal expenses. The analysis of both savings and expenses is provided in the Paperwork Reduction Act section below.

Small entities are encouraged to comment on this proposed rule.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, Tribal, or State governments, or the private sector. MMS has determined that first year impacts to all States under this proposed rule would be $52,600 with subsequent year impacts of $2,800 per year. MMS anticipates that these impacts will be at least partially offset by administrative savings and/or increased revenues realized by the relief granted under this proposed rule.

Executive Order 12630

The Department certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this proposed rule is not a significant rule under this Executive Order 12866. The Department's analysis indicates this proposed regulation will result in a net benefit for industry, the Federal government, and the State and local royalty recipients through reduced administrative burden and enhanced revenues.

Paperwork Reduction Act

This proposed rule contains new information collection requirements and revises information collection requirements that are approved by the Office of Management and Budget (OMB) for Form MMS–2014 (OMB Control Number 1010–0022). Therefore, we have submitted information collection requests to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB Control Number 1010–NEW), Washington, D.C. 20503. Send copies of your comments to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; e-Mail address is RMP.comments@mms.gov. We will consider all comments received during the comment period for this notice of proposed rulemaking.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

RSFA requires that MMS provide accounting and auditing relief for marginal properties on a case-by-case basis when in the best interests of the Federal Government and the State concerned.

We require that a lessee or designee submit either a notification or a request to obtain marginal property relief. This will allow us to determine what relief is being taken or is being sought.

Notifications or requests are only required of lessees or designees who wish to obtain accounting or auditing relief under RSFA. Therefore, your submission is strictly voluntary. RSFA provides that both MMS and the State concerned must consent to the relief before it can be taken.

Industry applicants, the States concerned, and the Federal Government will have information collection costs. An applicant must submit its company name, address, phone number, contact name, MMS-assigned Payor Code Number, Accounting Identification Number for the marginal property, and a detailed description of the specific accounting or auditing relief sought. In addition, depending on the relief sought, the lessee or designee must provide the single selling arrangement it will report royalties under or the new reporting frequency. The information is readily available to the lessee or designee taking the specific relief option being sought.

We anticipate that applicants may file as many as 10,500 notifications under § 204.210(a) and 143 requests under § 204.210(b) in the first year of implementation. We estimate that each request on average may contain about five qualifying marginal properties. Because the relief for a marginal property is for the life of the property, as long as the property remains marginal, a lessee or designee need only file an application one time. Thereafter, we expect approximately 1,050 notifications and 14 requests filed each year. Each notification is expected to take approximately one-half hour to complete, and each request is expected to take 4 hours to complete.

We determined that the burden hour estimate to industry in the first year for preparing and filing the marginal property applications is 5,822 burden hours (10,500 notifications × ½ hour per notification) + (143 requests × 4 hours per request). Using an estimate of $50 per hour for industry cost, we estimate the cost burden is $291,100 (5,822 burden hours × $50 per hour). This burden is offset by 514,000 fewer royalty lines of information per year that are no longer required. We project that the total hour burden reduction for manual and electronic reporting is 25,700 hours, resulting in an estimated dollar savings to industry of $1,285,000 (25,700 hours × $50 per hour). In subsequent years, the annual burden hour estimate is 581 burden hours ((1,050 notifications × ½ hour per notification) + (14 requests × 4 hours per request), and the annual cost burden estimate is $29,050 (581 burden hours × $50 per hour). This annual cost burden is offset by $1,285,000. This is the dollar amount in cost savings to industry associated with a reduction of 514,000 fewer royalty lines of data that are no longer required.

In addition, lessees and designees must submit a processing fee of $50 per request for marginal property relief. This fee is required under the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701. The fee is not required for notifications because the cost of collection of the fee is a significant portion of the total costs of processing. Therefore, the additional cost burden to industry is $7,150 ($50 fee × 143 requests) in the first year and $700 ($50 fee × 14 requests) for subsequent years.

We determined that the burden hour estimate to the Federal Government in the first year, for processing, input, review, approval, and handling is 5,720 burden hours (143 requests × 40 hours per request). Using an estimate of $50 per hour for direct labor cost, we estimate the cost burden is $286,000 (5,720 burden hours × $50 per hour). This burden is partially offset by $7,150 ($50 fee × 143 requests) in processing fee collections. In addition, we estimate that annually 514,000 fewer lines of royalty information will be processed for an administrative savings of $303,260 (514,000 × $.59 per line). In subsequent years, the annual burden hour estimate is 560 burden hours (14 requests × 40 hours per request). The annual cost burden estimate is $28,000 (560 burden hours × $50 per hour). This burden is offset by $700 ($50 fee × 14 requests) in processing fees and $303,260 in administrative savings from processing fewer royalty lines.

The State concerned will also have information collection and processing costs. We estimate that the first year burden is 1,052 hours. RSFA requires State approval for all marginal property relief granted under RSFA. Therefore, State burden is unavoidable. First year burden hour estimates for review and development of a State-blanket acceptance policy for the three notification-based relief options under § 204.210 (a) is 40 hours per relief option × 3 relief options × 4 primary States = 480 hours. In addition, first year burden hour estimates for property-by-property review and determination for the three request-based relief options is 4 hours per individual property relief request × 143 first year requests = 572 hours. We anticipate that the State's review is significantly more limited than MMS's review of each request and that, in most cases, the State will rely on the review effort and recommendation by MMS. Therefore, the total estimate for first year State burden is 480 hours + 572 hours = 1,052 hours × $50 cost per hour = $52,600.

We estimate that the combined annual burden to all States is 56 hours after the first year. The burden to the States for the review and development of a State-blanket acceptance policy for the three notification-based relief options is a one-time effort accomplished during the first year. Subsequent year burden hours for property-by-property review and determination for the three request-based relief options is estimated at no more than 10 percent of the first year's request level. Relief approval for a property is granted for as long as the property qualifies as marginal. By nature, production from a marginal property will tend to decline over time. Therefore, most marginal properties will continue to qualify as marginal. We estimate an additional 10 percent of requests for subsequent years based on newly-qualifying marginal properties—properties which previously qualified but for which no relief had been sought and resubmitted requests which had been previously denied. Therefore, the subsequent years' burden to the States is estimated as 4 hours per individual property relief request × 14 annual requests × $50 per hour = $2,800.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, we are providing notice and consulting with members of the public and affected agencies to solicit comment to (a) evaluate whether this expanded collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The PRA provides that 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.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this proposed rule, call 1–888–734–3247.

National Environmental Policy Act of 1969

We have determined that this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 204

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 6, 1999.

Sylvia V. Baca,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to add part

204 to title 30 of the Code of Federal Regulations, as follows:

PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES

Subpart A—General Provisions

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*, 1721 *et seq.*,1726 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1701 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

§ 204.1 What is the purpose of this part?

This part explains how a lessee or its designee of a Federal onshore or Outer Continental Shelf (OCS) oil and gas lease may obtain prepayment or accounting and auditing relief for certain marginal properties.

§ 204.2 Definitions.

Agreement means a federally approved communitization agreement or unit participating area.

Barrels of oil equivalents means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one barrel of oil equivalents. Also, each six thousand cubic feet of gas production is equal to one barrel of oil equivalents.

Base period means the 12-month period from October 1 through September 30 immediately preceding the calendar year in which you take or request marginal property relief.

Combined equivalent production means the total of all oil and gas production for the marginal property, stated in barrels of oil equivalents.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Producing wells means only those producing oil or gas wells that contribute to the sum of barrels of oil equivalents used in the calculation under § 204.4(c). Producing wells do not include injection and water wells.

State concerned (State) means the State which receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease.

§ 204.3 What alternatives are available for marginal properties?

If you have production from a marginal property you may:

(a) *Prepay royalty.* MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term.

(b) *Take accounting and auditing relief.* MMS and the State may allow various accounting and auditing relief options to encourage you to continue to produce and develop your marginal property. See subpart C for accounting and auditing relief requirements.

§ 204.4 What is a marginal property under this part?

To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your property must meet the following requirements:

(a) Production must be from, or attributable to, a Federal onshore or OCS lease. Indian leases are not eligible for the marginal property alternatives under this part, even though production from a qualifying marginal property may be attributable to an Indian lease. You must also meet the criteria shown in the following table:

If your lease is . . .	Then . . .	And . . .
(1) Not in an Agreement	The entire lease must qualify as a marginal property under paragraph (b) of this section.	
(2) Entirely or partly in one Agreement	The entire Agreement must qualify as a marginal property under paragraph (b) of this section.	Agreement production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not in the Agreement also separately may be eligible for relief under (a)(4) of this table.
(3) Entirely or partly in more than one Agreement.	Each Agreement must qualify separately as a marginal property under paragraph (b) of this section.	Only the qualifying Agreement's production allocable to your lease may be eligible for separate relief under this part.
(4) Partly in an Agreement and you have production from the part of the lease that is not in the Agreement.	The part of the lease that is not in the Agreement must qualify separately as a marginal property under paragraph (b) of this section.	

(b) To qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalents per well per day calculated under paragraph (c) of this section.

(c) To determine the average daily well production on or attributable to your property, divide the sum of the barrels of oil equivalents for all producing wells on the property by the sum of the number of days each of those wells actually produced during the base period. If your property is in an Agreement, your calculation under this section must include all wells included in the Agreement, even if they are not on a Federal onshore or OCS lease.

§ 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?

(a) MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to:

(1) Promote production;

(2) Reduce the administrative costs of MMS and the State; and

(3) Increase net receipts to the Federal Government and the State.

(b) MMS and the State may discontinue to allow any royalty prepayment or accounting and auditing relief options granted for your marginal property if MMS and the State jointly determine that the prepayment or relief option is no longer in the best interests of the Federal Government and the State under the standards in paragraph (a) of this section.

§ 204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

(a) If MMS denies your request for prepayment or accounting and auditing relief under this part because the State denied your request, MMS's decision is the final decision for the Department of the Interior and is not subject to administrative appeal.

(b) You may appeal any other MMS action on your request under 30 CFR parts 243 or 290.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

§ 204.200 What is the purpose of this subpart?

This subpart explains how a lessee or its designee may obtain accounting and auditing relief for production from a marginal property.

§ 204.201 Who may obtain accounting and auditing relief under this subpart?

You may obtain accounting and auditing relief under this subpart:

(a) If you are a lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4;

(b) If you meet any additional requirements for specific types of relief under this subpart; and

(c) Only for your fractional interest in the marginal property.

§ 204.202 What accounting and auditing relief options are available to me?

The following table shows the six relief options that you may take for properties that qualify as marginal under § 202.4 and tells you where in this subpart you can obtain more information:

For . . .	See . . .
Cumulative royalty reports and payments relief	§ 204.203
Net adjustment reporting relief	204.204
Rolled-up reporting relief	204.205
Alternate valuation relief	204.206
Audit relief	204.207
Other relief	204.208

§ 204.203 What is the cumulative royalty reports and payments relief option?

Under this relief option, you may submit royalty reports and payments less frequently than monthly.

(a) To determine whether your marginal property is eligible for relief under this relief option, you must:

(1) Multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or allocable to that lease during the base period;

(2) Total the volumes calculated under paragraph (a)(1) of this section; and

(3) Report your royalties as shown in the following table:

If the total volume calculated for the marginal property under paragraph (a)(2) of this section is	Then you may report and pay royalties for your lease
(i) 125 or fewer barrels of oil equivalents	Annually, semi-annually, or quarterly.
(ii) More than 125, but not more than 250 barrels of oil equivalents	Semi-annually or quarterly.
(iii) More than 250, but not more than 500 barrels of oil equivalents	Quarterly.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) You must:

(1) Submit your royalty report and payment in accordance with § 218.51(g) of this chapter by the end of the month following the end of the applicable quarterly, semi-annual, or annual reporting period;

(2) Report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014, for the reporting period, the same as if it were a monthly report; and

(3) Use the last sales month of the reporting period to report the royalty information for the entire period.

(d) If you do not pay your royalty by the date due in paragraph (c)(1) of this section, you will owe late payment interest determined under part 218 of this chapter from the date your payment was due under this section until the date MMS receives it.

(e) If you qualify for relief under paragraph (a) of this section, but you take more relief than you are entitled to under that paragraph, you will owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. You must also amend your Form MMS–2014 to reflect the allowable reporting frequency.

(f) You must report allowances on Form MMS–2014 on the same quarterly, semi-annual, or annual basis as the royalties for your marginal property.

(g) Under this relief option:

(1) Quarterly reporting periods begin on the first day of January, April, July, or October;

(2) Semi-annual reporting periods begin on the first day of January or July; and

(3) Annual reporting periods begin on the first day of January.

(h) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.204 What is the net adjustment reporting relief option?

Under this relief option, you may adjust previously reported royalty lines to MMS as a one-line net entry on Form MMS–2014, instead of the two-line adjustment process.

(a) To determine your eligibility for relief under this option, you must:

(1) First, multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or attributable to that lease during the base period;

(2) Total the volumes that you calculated under paragraph (a)(1) of this section;

(3) If the total volume calculated under paragraph (a)(2) of this section is less than or equal to 2,500 barrels of oil equivalents, then your property is eligible for relief under this option.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) You may not net your adjustments for royalties due with adjustments for allowances on Form MMS–2014.

(1) You must report your adjustment to a previously reported royalty due line as a one-line net entry; and

(2) You must report any corresponding adjustment to your previously reported allowance line as a separate one-line net entry.

(d) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.205 What is the rolled-up reporting relief option?

Under this relief option, you may report all selling arrangements for a revenue source to MMS under a single selling arrangement on Form MMS–2014.

(a) To determine your eligibility for relief under this option, you must:

(1) First, multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or attributable to that lease during the base period;

(2) Total the volumes that you calculated under paragraph (a)(1) of this section;

(3) If the total volume calculated under paragraph (a)(2) of this section is less than or equal to 1,000 barrels of oil equivalents, then your property is eligible for relief under this option.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.206 What is the alternate valuation relief option?

Under this relief option, you may request to report and pay royalties using a valuation method other than that required under part 206 of this chapter.

(a) Any alternate valuation method that you propose:

(1) Must be readily determinable and certain; and

(2) Must approximate royalties payable under the valuation regulations in part 206 of this chapter.

(b) You must obtain approval from MMS and the State under § 204.210(b) before taking alternate valuation relief. You must also submit a processing fee under § 204.210(b)(3).

(c) If MMS and the State approve your request, the valuation method you requested will be the value for royalty purposes for production from or attributable to your lease interest in the marginal property.

(d) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.207 What is the audit relief option?

Under this relief option, you may request a reduced royalty audit burden. However, MMS will not consider any request that eliminates MMS's or the State's right to audit.

(a) Audit relief may include:

(1) Audits of limited scope, including audits based on a statistical sampling of leases;

(2) Coordinated royalty and severance tax audits;

(3) Reliance by MMS on independent certified audits; and

(4) Any other audit relief that may be appropriate.

(b) You must obtain approval from MMS and the State under § 204.210(b) before receiving audit relief. You must also submit a processing fee under § 204.210(b)(3).

(c) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.208 What is the other relief option?

Under this relief option, you may request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not specifically prohibited under § 204.209.

(a) You must obtain approval from MMS and the State under § 204.210(b) before taking relief under this option. You must also submit a processing fee under § 204.210(b)(3).

(b) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.209 What accounting and auditing relief will MMS not allow?

MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit;

(b) Permanently relieves you from making future royalty reports or payments;

(c) Provides for less frequent royalty reports and payments than annually;

(d) Provides for you to submit royalty reports and payments at separate times;

(e) Impairs MMS's ability to properly or efficiently account for or distribute royalties;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind;

(g) Alters production reporting requirements;

(h) Alters lease operation or safety requirements;

(i) Conflicts with rent, minimum royalty, or lease requirements; or

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.214.

§ 204.210 How do I obtain accounting and auditing relief?

(a) To take accounting relief under §§ 204.203, 204.204, and 204.205, you must notify MMS in writing before the first day of the sales month for which you begin taking your relief.

(1) Your notification must contain:

(i) Your company name, MMS-assigned Payor Code, address, phone number, and contact name;

(ii) The specific Accounting Identification Number(s) (MMS lease number and revenue source);

(iii) The specific relief option under §§ 204.203, 204.204, and 204.205 that you are taking;

(iv) The first sales month that your relief is effective for;

(v) The frequency of your cumulative reports and payments if you are taking relief under § 204.203; and

(vi) The single selling arrangement you will use to report royalties and allowances for your marginal property if you are taking relief under § 204.205.

(2) You may file a single notification for multiple marginal properties if you are taking the same relief with the same effective date for all the properties.

(3) You do not need to remit a processing fee with your notification.

(b) To obtain accounting or auditing relief under §§ 204.206, 204.207, and 204.208, you must file a written request for relief with MMS.

(1) Your request must contain:

(i) Your company name, MMS-assigned Payor Code, address, phone number, and contact name;

(ii) The specific Accounting Identification Number(s) (MMS lease number and Revenue Source); and

(iii) A complete and detailed description of the specific accounting or auditing relief you seek under §§ 204.206, 204.207, and 204.208.

(2) You may file a single request for multiple marginal properties if you are requesting the same relief for all properties.

(3) You must remit a processing fee in the amount of $50 for each request for marginal property relief under §§ 204.206, 204.207, and 204.208. If you file a single request for multiple marginal properties as provided in paragraph (b)(2) of this section, your processing fee is $50 for the entire request.

(i) If you do not remit the processing fee with your request for relief, MMS will return your request for relief unprocessed.

(ii) If you remit a partial processing fee, your request for relief will not be processed until you pay the processing fee in full. MMS will notify you in writing that your processing fee is insufficient. You will have 30 days to remit the balance. If you do not remit the balance within the 30-day period, MMS will return your request for relief unprocessed.

(iii) Processing fees, including partial processing fees, are not refundable for any reason.

(iv) See MMS's Marginal Property Guidelines for additional instructions on submitting processing fees.

(c) You must submit notifications, requests, or processing fees required under this section to the address specified in MMS's Marginal Properties Guidelines.

§ 204.211 What will MMS do when it receives my request for accounting and auditing relief?

When MMS receives your request for accounting and auditing relief under § 204.210(b), it will notify you as follows:

(a) If your request for relief is complete, MMS and the State may either approve, deny, or modify your request in writing.

(b) If your request for relief is not complete, MMS will notify you in writing that your request is incomplete and identify any missing information. You must submit the missing information within 30 days of your receipt of MMS's notice that your request is incomplete.

(1) If you submit all required information, MMS and the State may approve, deny, or modify your request for relief;

(2) If you do not submit the missing information within 30 days, MMS will return your request for relief as incomplete.

(i) If MMS returns your request because it is incomplete, MMS will not return any processing fee you submitted with your request.

(ii) You may submit a new request for relief under this subpart at any time after MMS returns your incomplete request. You must also submit another processing fee.

§ 204.212 Who will decide whether to approve, deny, or modify my request for accounting and auditing relief?

(a) If there is not a State concerned for your marginal property, only MMS will decide whether to approve, deny, or modify your relief request.

(b) If there is a State concerned for your marginal property, the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated must jointly determine with MMS whether to approve, deny, or modify your relief request. States must submit the following minimum information to MMS in writing within 30 days of the effective date of this rule:

(1) The name and title of the State official authorized to jointly determine with MMS whether to approve, deny, or modify relief requests; and

(2) The name, address, and telephone number of the State contact for processing relief requests.

(c) MMS will not approve your request to use an alternate valuation method until the Assistant Secretary for Land and Minerals Management approves the request.

§ 204.213 How will MMS and the State jointly determine whether to approve, deny, or modify my request for accounting and auditing relief?

If a State determines in advance that it may grant one or more of the relief options under this subpart:

(a) MMS will preliminarily determine whether to approve, deny, or modify your relief request and send its preliminary determination to the State;

(b) After the State receives MMS's preliminary determination, it must notify MMS in writing within 30 days, or such longer period as MMS may allow, of its recommendation to approve, deny, or modify your relief request.

(1) If the State approves your relief request:

(i) MMS will approve your relief request if MMS's preliminary determination was to approve your request;

(ii) MMS may either approve or deny your relief request if MMS's preliminary determination was to deny your request.

(2) If the State denies your relief request, then MMS will deny your relief request.

(3) If the State approves MMS's modification(s) to your relief request, MMS will modify your relief request.

(4) If the State denies MMS's modification(s) to your relief request, MMS will deny your relief request.

(5) If the State modifies your relief request, MMS will consider the modification(s) and will either:

(i) Modify your request if it approves the State's modification(s); or

(ii) Deny your request if it denies the State's modification(s).

(c) If the State does not notify MMS of its decision within the time period allowed under paragraph (b) of this section, then the State is deemed to have agreed with MMS's preliminary determination.

§ 204.214 May a State decide in advance that it will not allow certain relief options under this subpart?

(a) A State may decide in advance that it will not allow some or all of the relief options specified in this subpart. If it so decides, the State must:

(1) Notify the Associate Director for Royalty Management, MMS, in writing, no later than 90 days before the beginning of the applicable calendar year, of its intent to disallow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will not allow.

(b) If a State decides in advance under paragraph (a) of this section that it will not allow some or all of the relief options specified in this subpart, it may later decide that it will allow some or all of the relief options in this subpart. If it so decides, the State must:

(1) Notify the Associate Director for Royalty Management, MMS, in writing, no later than 90 days before the beginning of the applicable calendar year, of its intent to allow one or more of the relief options under § 204.202; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

(c) MMS will publish a notice of the State's intent to disallow or to allow certain relief options under this section in the **Federal Register** no later than 60 days before the beginning of the applicable calendar year.

§ 204.215 How will MMS notify me of the decision to approve, deny, or modify my request for accounting and auditing relief?

MMS will notify you in writing of the decision on your request for accounting and auditing relief.

(a) If MMS and the State approve your request for relief, MMS will notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

(b) If MMS and the State deny your relief request, MMS will notify you of the reasons for denial and your appeal rights under § 204.6.

(c) If MMS and the State modify your relief request, MMS will notify you of the modifications.

(1) You have 30 days from your receipt of MMS's notice to either accept or reject any modification(s) in writing.

(2) If you reject the modification(s) or fail to respond to MMS's notice, MMS and the State will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

§ 204.216 What other guidance is available for accounting and auditing relief obtained under this subpart?

MMS will provide additional guidance for accounting and auditing relief in MMS's Marginal Property Guidelines.

§ 204.217 What if my property ceases to qualify for relief obtained under this subpart?

(a) Your property must qualify for relief under this subpart for each calendar year based on production during the base period. The notice or request you provided to MMS under § 204.210 for the first calendar year that your property qualified for relief remains effective for successive calendar years if you continue to qualify.

(b) If you find your property is no longer eligible for relief because production increased in the most recent Base Period, the relief for your property terminates as of December 31 of that calendar year. By December 31, you must notify MMS in writing at the address provided in MMS's Marginal Property Guidelines that the relief for your property has terminated.

(c) MMS may retroactively rescind the relief for your property if MMS determines that your property was not eligible for the relief obtained under this subpart because:

(1) You did not submit a notice or request for relief under § 204.210;

(2) You submitted erroneous information in the notice or request for relief you provided to MMS under § 204.210 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under paragraph (b) of this section.

(d) If you took relief under this subpart for a period for which you were not eligible, you may owe additional royalties and late payment interest determined under part 218 of this title from the date your payment was due until the date MMS receives it.

§ 204.218 May I obtain accounting and auditing relief for a marginal property that benefits from other Federal or State incentive programs?

You may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

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Thursday
January 21, 1999

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Business Class Airfare; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 97–040]

RIN 9000–AH98

Federal Acquisition Regulation; Business Class Airfare

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have decided to withdraw FAR Case 97–040, Business Class Airfare, published in the **Federal Register** at 63 FR 43239, August 12, 1998. The rule proposed to amend the Federal Acquisition Regulation (FAR) to revise the ''travel costs'' cost principle to allow, in certain situations, business class airfare costs for flights lasting more than 14 hours.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 97–040, withdrawal.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule revised paragraph (d) of FAR 31.205–46, Travel costs, to allow, under certain conditions, contractor costs for business class airfare on flights lasting more than 14 hours. The rule designated the current coverage at (d) as (d)(1) and added a new subparagraph (d)(2) to deal specifically with business class airfare.

Some of the respondents to the **Federal Register** notice expressed concern that the rule would result in inconsistent treatment of the costs for business class and first class airfares (e.g., the allowability requirements for business class airfare are more restrictive than those for first class airfare); confusion (*e.g.*, differing interpretations of the words ''stopovers,'' ''rest stop in route,'' and ''rest period upon arrival''); and an administrative burden (*e.g.*, documentation showing no rest period for business class airfare). After review of the public comments, DoD, GSA, and NASA have decided to withdraw the proposed rule, and retain the current cost principle which adequately addresses the allowability of first class and business class airfare costs.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–1315 Filed 1–20–99; 8:45 am]

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federal register

Thursday
January 21, 1999

Part V

Environmental Protection Agency

40 CFR Parts 262, 264, and 265

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[IL–64–2–5807; FRL–6221–9]

RIN 2060–AG44

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification and technical amendment.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has promulgated standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the ''subpart CC'' standards due to their inclusion in subpart CC of parts 264 and 265 of the RCRA subtitle C regulations). These air standards control organic emissions from certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

Since publication of the final standards on December 6, 1994, the EPA has given public notice and taken comment on several proposed revisions to the final rule, and has made corresponding amendments. In response to public comments and inquiries, today's action makes clarifying amendments to certain regulatory text and reestablishes certain regulatory provisions that were previously contained in the rules and later inadvertently removed.

DATES: These amendments are effective January 21, 1999.

ADDRESSES: *Docket.* The supporting information used for the subpart CC rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, F–95–CE3A–FFFFF, F–96–CE3F–FFFFF, and F–96–CE4A–FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

Review of docket materials is conducted at the Virginia address; the public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424–9346. Contacts for specific information are listed in the ''Supplementary Information'' section of this preamble.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1030 and § 265.1030 of the RCRA subpart AA rules, § 264.1050 and § 265.1050 of the RCRA subpart BB rules, and § 264.1080 and § 265.1080 of the RCRA subpart CC air rules.

Informational Contacts

If you have questions regarding the applicability of this action to a particular situation, or questions about compliance approaches, permitting, enforcement and rule determinations, please contact the appropriate regional representative in the table below:

Region I:
Stephen Yee, (617) 565–3550
Jim Gaffey, 565–3437
U.S. EPA, Region I
JFK Federal Building
Boston, MA 02203–0001

Region II:
Abdool Jabar, (212) 637–4131
John Brogard, 637–4162
Jim Sullivan, 637–4138
U.S. EPA, Region II
290 Broadway
New York, NY 10007–1866

Region III:
Linda Matyskiela, (215) 566–3420
Andrew Clibanoff, 566–3391
U.S. EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

Region IV:
Denise Housley, (404) 562–8495
Rick Gillam, 562–8498
Jan Martin, 562–8593
Anita Shipley, 562–8466
Donna Wilkinson, 562–8490
Judy Sophianolpoulos, 562–8604
David Langston, 562–8588
U.S. EPA, Region IV
61 Forsyth Street
Atlanta, GA 30303

Region V:
Jae Lee, (312) 886–3781
Uylaine McMahan, 886–4454
Mike Mikulka, 886–6760
Ivonne Vicente, 886–4449
Wen Huang, 886–6191
U.S. EPA, Region V
77 West Jackson Street
Chicago, IL 60604

Region VI:
Michelle Peace, (214) 665–7430
Teena Wooten, 665–2279
U.S. EPA, Region VI
1445 Ross Avenue, Suite 1200
Dallas, TX 75202–2733

Region VII:
Ed Buckner, (913) 551–7621
Ken Herstowski, 551–7631
U.S. EPA, Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Region VIII:
Mindy Mohr, (303) 312–6525
Janice Pearson, 312–6354
U.S. EPA, Region VIII
999 18th Street, Suite 500
Denver, CO 80202–2466

Region IX:
Stacy Braye, (415) 774–2056
Jean Daniel, 774–2128
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Region X:
Linda Liu, (206) 553–1447
David Bartus, 553–2804
U.S. EPA, Region X

1200 Sixth Avenue
Seattle, WA 98101

For questions about testing or analytical methods mentioned in this document, please contact Ms. Rima Dishakjian, Emission Measurement Center (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2363, electronic mail address, aston.michele@epa.gov.

Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) as may be necessary to protect human health and the environment. This requirement echoes the general requirement in RCRA section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265, subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA today is making technical amendments to the final subpart AA and CC standards, and providing interpretations for certain provisions of those rules. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published four **Federal Register** documents that delayed the effective date of that rule, i.e., 60 FR 26828, May 19, 1995; 60 FR 56952, November 13, 1995; 61 FR 28508, June 5, 1996; 61 FR 59931, November 25, 1996). The November 1996 notice established the ultimate effective date of December 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a **Federal Register** document entitled, ''Proposed rule; data availability'' (60 FR 41870) and opened RCRA docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1996 and 1997, the EPA engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

To further inform the affected public of the major clarifications, compliance options, and technical amendments being considered, the EPA conducted a series of seminars during August and September of 1995. At that time, a total of six seminars were held nationally. An updated series of six seminars was held in September through December 1996 and two additional seminars were held March and April of 1997 in conjunction with an industry trade association. (Refer to EPA RCRA Docket No. F–95–CE3A–FFFFF.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers.

On February 9, 1996, the EPA published a **Federal Register** document (61 FR 4903), ''Final rule; technical amendment,'' which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

On November 25, 1996, the EPA published a **Federal Register** document (61 FR 59932), ''Final rule'' that amended provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules to be December 6, 1996.

On December 8, 1997, the EPA published a **Federal Register** document (62 FR 64636), ''Final rule; clarification and technical amendment'' that amended provisions of the final subparts AA, BB, CC rules to clarify the regulatory text of the final standards; interpret those standards; correct typographical, printing, and grammatical errors; and clarify certain language published in the preambles of previous **Federal Register** documents.

Today's action makes technical amendments to the final subpart AA and CC rules in order to further clarify the regulatory text of the final standards; interpret those standards; and correct typographical, printing, and grammatical errors.

Outline.

The information presented in this preamble is organized as follows:

I. Subpart B—General Facility Standards

Today's action replaces the references to the subpart AA, BB, and CC standards in §§ 262.34(a)(1)(i) and 262.34(a)(1)(ii) as standards that must be met as conditions where a generator may accumulate hazardous waste on-site for 90 days or less without a RCRA permit or without having interim status. The references to subparts AA, BB, and CC were removed mistakenly by the November 25, 1996, **Federal Register** notice (61 FR 59950). At the time, it was thought that, since the subparts were also referenced in Subpart I—Use and Management of Containers at § 264.179 and in Subpart J—Tank Systems at § 264.200, the references in § 262.34, Accumulation time, were redundant. It was later determined that the references to subparts AA, BB, and CC are needed for clarity and the permit exemption criteria are being replaced by today's notice.

II. Subpart AA: Air Emission Standards for Process Vents

The definition of ''equipment'' contained in subpart AA at § 254.1031 is being revised to include ''other connectors'' in the list of components that are considered equipment under the subpart BB Air Emission Standards for Equipment Leaks. The applicability section of the subpart BB rules states that the ''subpart applies to equipment that contains or contacts hazardous waste * * *'' However, when the subpart BB rules were originally promulgated in June of 1990 (55 FR 25495) the term ''other connectors'' was inadvertently left out of the equipment definition; this has caused some uncertainty regarding applicability of the rule to other connectors. Nonetheless, it is clear that the EPA intended other connectors to be included in the list of equipment covered by the rule. This is demonstrated by the fact that the term ''other connectors'' is used throughout § 264.1058 and § 265.1058 of the subpart BB standards whenever the equipment that is covered by this section of the rule is listed. Also, the preamble to the final subpart BB rules in Section V.C (i.e., Applicability and Requirements of Today's Final Standards) clearly states in discussing affected equipment at 55 FR 25465 (June 21, 1990) that ''* * * flanges and *other connectors* must be monitored within 5 days by Reference Method 21 if evidence of a potential leak is found * * *'' In addition, the original Clean Air Act equipment leak rules (i.e., subpart VV in 40 CFR 60.481) that served as the technical basis for the RCRA subpart BB equipment leak standards do include the term ''other connector'' in the definition of equipment subject to the rule. To correct this oversight, the definition of ''equipment'' contained in subpart AA at § 254.1031 is being revised to include ''other connectors'' in the list of components that are considered equipment under subpart BB.

The definition for ''open-ended valve or line'' is being amended to replace the term ''process fluid'' with the words ''hazardous waste.'' The definition has included the term ''process fluid'' to characterize an open-ended valve or line since the rule was originally published on June 21, 1990 (55 FR 25495); i.e., ''* * * one side of the valve seat in contact with process fluid and one side open to the atmosphere * * *'' It was recently brought to the EPA's attention that the definition should use the term ''hazardous waste'' rather than ''process fluid'', since the subpart BB rules only apply to equipment (e.g., an open-ended valve or line) that contains or contacts hazardous waste as stated in the applicability sections at § 264.1050(b) and § 265.1050(b). In addition, the RCRA air rules for open-ended valves or lines (at § 264.1056 and § 265.1056) clearly refer to the material or fluid in the valve or line as being hazardous waste. Therefore, as a part of today's action the definition is being revised to avoid any confusion regarding what constitutes an open-ended line or valve.

Also within subpart AA, a definition is being added for ''sampling connection system.'' This is being done in order to clarify the difference between a ''sampling connection'' and an ''open-ended line'' which have significantly different technical requirements under the subpart BB rules. There has been some confusion regarding open-ended lines being considered as sampling connections and the new definition should eliminate any potential for overlap.

III. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

A. Applicability

In today's action, the EPA is amending paragraph (b)(5) of § 264.1080 and § 265.1080 to clarify that waste management units that are used solely for on-site treatment or storage of hazardous waste that is ''placed in the unit'' as a result of implementing Federally required remedial activities are exempt from the requirements of subpart CC. The language originally used in this paragraph stated that the hazardous waste must be ''generated'' as a result of implementing Federally required remedial activities. The word ''generated'' does carry a certain programmatic connotation; therefore, the word ''generated'' is being replaced because of the potential confusion caused by some of the regulated community taking a strictly regulatory interpretation of the term ''generated'' (i.e. viewing it as a term of art) rather than a more literal, plain English interpretation as was intended by the EPA in this context. For example, under the RCRA regulations, section 260.10, the term ''generate'' carries a particular legal context which was not intended to be strictly applied in this paragraph. Therefore, the word ''generated'' is being replaced to avoid any misinterpretation.

B. Waste Determination Procedures

Paragraph (a)(1)(i) of § 264.1083 and § 265.1084 is being amended to add new paragraphs (i) and (ii) that affect the requirements for when an owner or operator must make a determination of the volatile organic (VO) concentration of the waste stream. These new paragraphs effectively reestablish the previously contained requirements for determining VO concentration for hazardous wastes placed in a waste management unit exempted from using subpart CC air emission controls because the waste has an average VO concentration at the point of waste origination less than the action level of 500 ppmw.

As originally published, the subpart CC rules required that an initial determination of the average VO concentration of the hazardous waste stream be made before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. (See § 264.1083(a)(1), § 265.1084(a)(1), § 265.1084(a)(2)(i)(A), § 265.1084(a)(2)(ii)(A), § 265.1084(a)(3)(i)(A), and § 265.1084(a)(3)(ii) in 59 FR 62938 through 62939, December 6, 1994.) Thereafter, a determination of the VO concentration was required for each averaging period that a hazardous waste is managed in the unit. (See § 265.1084(a)(5)(ii) in 59 FR 62939, December 6, 1994.) In addition, the owner or operator was required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream were reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits. (See § 265.1084(a)(2)(i)(B), § 265.1084(a)(2)(ii)(B), and § 265.1084(a)(3)(i)(B) in 59 FR 62939, December 6, 1994.)

In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084 to allow various test methods other than Method 25D to be used as direct measurement in a waste determination. At this time, the EPA also revised the waste determination procedures such that, for both point of waste origination and point of waste treatment, no distinction was made for batch or continuous processes or for whether the owner or operator is the generator or receives the waste from off-site. In making these changes, the EPA inadvertently removed the requirements, in paragraphs (2) and (3) of § 265.1084(a) and in paragraph § 265.1084(a)(5)(ii), for when a determination of VO concentration is required. Today's amendments reestablish those requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

Under the restored language in today's amendments, the owner or operator must perform an initial determination of the average VO concentration of the hazardous waste stream before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Following the initial VO concentration determination, a determination of the VO concentration is required for each averaging period that a hazardous waste is managed in the unit. This means that the owner or operator must have a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. This VO concentration determination must reflect the VO concentration of the waste currently managed in the unit over the time frame covered by the specified averaging period.

In addition, the owner or operator is required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits.

The following example illustrates the requirement that the owner or operator have an initial as well as a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Assume that a TSDF owner has a production process that continuously generates a hazardous waste. Just prior to December 6, 1996, the effective date of the rule, the TSDF owner determines by direct measurement using Method 25D that, using a 6-month averaging period, the particular hazardous waste stream had an average VO concentration of 250 ppmw at the point of waste origination. The owner then records that for the 6-month period beginning with December 6, 1996, this particular generated waste stream has an average VO concentration of 250 ppmw; this serves as the initial determination of VO concentration as required under § 265.1084(a)(1)(i) in today's amendments.

Because the example waste stream has a VO concentration less than the action level of 500 ppmw, the owner manages the hazardous waste in a unit that is not equipped with subpart CC air emission controls. Under the requirements being reestablished in today's amendments, by June 6, 1997 (i.e., the end of the first 6-month averaging period) the owner must perform a new waste VO concentration determination for the next 6-month averaging period that would run from June 6 to December 6, 1997. In this example, the owner now elects to perform the new VO concentration determination using knowledge of the waste rather than using direct measurement as was done previously using Method 25D. The owner however does use the results of the first direct measurement, together with process engineering knowledge and experience (e.g., no change has been made to the raw materials or process technology for the steady-state production operation generating the waste) as the basis for the ''knowledge'' based VO concentration determination. Therefore, the owner records that for the 6-month averaging from June 6 to December 6, 1997, this particular waste stream has an average VO concentration of 250 ppmw. This waste VO concentration determination meets the requirements in § 265.1084(a)(1)(i) of today's amendments that a VO concentration determination be made for *each* averaging period that a hazardous waste is managed in a unit exempt from air emission controls under the action level criteria.

To continue the example, the owner repeats this same process for the averaging period that runs from December 6, 1997, to June 6, 1998. However, in April 1998, the owner modifies the production process and determines that this modification has the potential to cause the average VO concentration of the hazardous waste generated to increase to a level that is equal to or greater than the 500 pppmw action level. In this situation, under the requirements reestablished by today's action, the owner would be required to perform a new determination of the average VO concentration because of the changes to the source generating the waste. (See § 265.1084(a)(1)(ii) in today's amendments.)

Without today's amendments to the waste determination requirements of subpart CC, there is effectively no requirement (or guidance) provided within the rules as to when an owner or operator must determine the VO concentration of a hazardous waste stream. This was not EPA's intent. We intended that the owner or operator maintain a current VO concentration determination for each averaging period. This is clearly illustrated by the preamble discussion in the December 6, 1994 **Federal Register** notice, which states (at 59 FR 62916): ''If an average volatile organic concentration is used, an initial waste determination must be performed for *each* averaging period.'' Today's amendments reestablish requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

In other changes to the waste determination provisions of subpart CC, the EPA is amending the waste sampling provisions of the rule to clarify requirements related to the sampling period. In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084; the requirements regarding sampling of the hazardous waste stream for a direct measurement of the VO concentration were also revised and reformatted. In doing so, provisions previously in the rule at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939 and 59 FR 62941, December 6, 1994), requiring that all waste samples for a particular waste determination be collected within a 1-hour period and that information on waste quantity and operating conditions relative to the waste samples be prepared and recorded, were inadvertently left out of the rule language. This language is being restored in today's amendments.

On December 8, 1997 (see 62 FR 64664), the EPA amended the language regarding sampling for a waste determination in § 265.1084(a)(3)(ii)(B) and § 265.1084(b)(3)(ii)(B) to clarify the EPA's intent regarding the number of samples required for a waste determination. The amended paragraph stated (as did the published rule language at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) [see 59 FR 62939, December 6, 1994]), that the average of four or more sample results constitutes a waste determination for the waste stream. This amended paragraph further clarified that one or more waste determinations may be needed to represent the average VO concentration over the complete range of waste compositions and quantities that occur during the entire averaging period (due to normal variations in the operating conditions for the source or process generating the hazardous waste stream). Thus, to determine the average VO concentration of a waste stream generated by a process with large seasonal variations in waste quantity, or fluctuations in ambient temperature, several waste determinations (consisting of four or more samples each) will be required. In making the change in December of 1997, the amendment failed to include the language previously contained at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939 and 59 FR 62941, December 6, 1994) that the four samples needed for a waste determination are required to be collected within a 1-hour time period and that certain information relative to the waste samples must be recorded. Today's amendments to § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii) add language in paragraph (B) that clearly states that ''all samples for a given waste determination shall be collected within a 1-hour period;'' and add a new paragraph (D) that reestablishes the requirement that ''sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating [or treating] the hazardous waste represented by the samples.'' The information on waste quantity and operating conditions is needed to properly calculate the mass-weighted average VO concentration over the averaging period and to assess that the averaging period used adequately characterizes the source or process over the time period selected for the averaging period. The type of information and data needed to meet this requirement should be clearly specified in the ''site sampling plan'' required under paragraph (C) of § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii).

Also in the waste determination section of the rule, a portion of sections § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) is amended by today's action in order to clarify that, if the owner or operator elects to adjust the individual test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D, the adjustment must be made to *all* individual chemical constituents that comprise the average VO concentration. The constituent adjustment cannot be made on a selective constituent basis. Because some of the constituent-specific adjustment factors are greater than 1.0, selective use of the constituent adjustment may not provide an accurate representation of the average VO concentration as measured by Method 25D. The existing rule language at § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) states that ''the concentration of each individual chemical constituent measured in the waste'' may be corrected by multiplying the measured concentration by the constituent-specific adjustment factor. The same point is made in § 265.1084(a)(4)(iii) which specifies the procure to be used to adjust the data. This paragraph states that ''the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor.'' The EPA's use of the phrase ''each individual chemical constituent contained in the wastes'' is intended to convey the meaning that *all* constituents in the waste must be adjusted using the appropriate individual adjustment factor, if the owner or operator elects to adjust the data. The EPA has in no way stated or otherwise implied that constituent-specific concentration test data can be adjusted on a selective constituent basis to characterize the VO concentration.

C. Standards: Tanks

Paragraph (h)(3) of the tank standards in § 264.1084 and § 265.1085 is being amended to allow owners or operators that elect to use a pressure tank, to control air emissions under the subpart CC rule, to purge the inert materials from the pressure tank as is required by normal operation (i.e., good engineering practices) for this type of tank system. The rule requires that, whenever hazardous waste is in a pressure tank, the tank must operate as a closed system that does not vent to the atmosphere. With today's changes, the owner or operator is allowed to purge the tank as long as the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the subpart CC rule requirements for closed-vent systems and control devices. A tank operating in this manner is technically meeting the alternative requirements for tanks using Tank Level 2 controls as specified in § 264.1084(d)(3) and § 265.1085(d)(3) which applies tanks vented through a closed-vent system to a control device. Therefore, venting of a pressure tank under controlled conditions complies with the subpart CC standards for Tank Level 2 controls and is allowed under the rules.

D. Standards: Containers

Transfer requirements are being added to the Level 3 container standards as a part of today's action. These requirements are essentially the same as those for the (less stringent) Level 2 container standards. These transfer requirements for Level 3 containers were inadvertently left out of the subpart CC requirements when they were published in November 1996, 61 FR 59962. The EPA had intended that the Level 3 container standards incorporate these transfer requirements and today's amendments rectify that oversight.

VI Administrative Requirements

A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F–91–CESP–FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F–92–CESA–FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; (3) RCRA docket number F–94–CESF–FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F–94–CE2A–FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F–95–CE3A–FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F–96–CE4A–FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. In a number of instances, the changes simply restore inadvertently deleted provisions, and all information collection requirements in such provisions were previously approved. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

C. Executive Order 12866

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to the Office of Management and budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of 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.

The RCRA subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and EPA accordingly prepared a regulatory impact analysis (RIA). The amendments published today make technical changes to the rule and correct structural problems with the drafting of some sections. This action is not a ''significant regulatory action'' within the meaning of Executive Order 12866; thus, OMB review of the action is not required.

D. Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities such as small businesses, small organization and small governments. However, no regulatory flexibility analysis is required if the agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities. For the reasons discussed in the December 6, 1994 **Federal Register** (59 FR 62923), the subpart CC rules themselves do not have a significant impact on a substantial number of small entities. The present rule only makes technical changes to the subpart AA and CC rules, and does not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities and therefore does not require a regulatory flexibility analysis.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These final amendments are not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because they are not economically significant regulatory actions as defined by E.O. 12866.

G. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards. Today's action does not put forth any technical standards as part of the clarifying amendments. Therefore, consideration of voluntary consensus standards was not required.

H. Enhancing the Intergovernmental Partnership Under 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 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 action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statue, 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 amendments to the final rule do not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

J. 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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. § 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of January 21, 1999. 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).

K. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. As originally published, the final subpart AA, BB, and CC emission standards for units managing hazardous wastes contain an applicability threshold or action level formatted in terms of either a total or volatile organic concentration of the hazardous waste that must be exceeded in order for a particular standard to apply. By formulating the standard in this way, flexibility is allowed for facility owners or operators to initiate process modifications or incorporate treatment technologies that will accomplish the same environmental results at lower costs; this encourages pollution prevention alternatives that reduce the organic content of the hazardous waste generated. Today's amendments to the RCRA air rules in no way affect the pollution prevention alternatives and measures previously incorporated into the final rules.

L. Immediate Effective Date

The EPA has determined to issue this rule without first proposing it and to make today's action effective immediately. The EPA believes that the corrections being made in today's action are either interpretations of existing regulations which do not require prior notice and opportunity for comment, or are technical corrections of obvious errors in the published rules (for example, corrections to regulations inconsistent with or not carrying out statements in the preamble or Background Information Document, or restoration of provisions which were deleted inadvertently). Comment on such changes is unnecessary, within the meaning of 5 USC 553(b)(3)(B). For the same reason, there is good cause for the rules to be made effective immediately, within the meaning of 5 U.S.C. 553(d)(3).

VII. Legal Authority

These regulations are amended under the authority of sections 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921–6927, 6930, and 6974).

List of Subjects

40 CFR part 262

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Inspection, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSDF, Waste determination.

Dated: January 8, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 262, 264, and 265 of the Code of Federal Regulations are amended as follows:

PART 262—STANDARD APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6299, 6925, 6937, and 6938, unless otherwise noted.

2. Section 262.34 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(1) * * *

(i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except §§ 265.197(c) and 265.200; and/or

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart AA—Air Emission Standards for Process Vents

4. Section 264.1031 is amended by revising the definitions of ''Equipment'' and ''Open-ended valve or line'' and adding a new definition for the term ''Sampling connection system'' in alphabetical order to read as follows:

§ 264.1031 Definitions.

* * * * *

Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

* * * * *

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

* * * * *

Sampling connection system means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

5. Section 264.1080 is amended by revising paragraph (b)(5) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

* * * * *

6. Section 264.1083 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (b)(1)(i), and (b)(1)(ii) to read as follows:

§ 264.1083 Waste determination procedures.

(a) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 264.1082(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 264.1082 of this subpart.

* * * * *

(b) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 264.1082 (c)(2) of this subpart are not achieved.

* * * * *

7. Section 264.1084 is amended by revising paragraph (h)(3) to read as follows:

§ 264.1084 Standards: Tanks.

* * * * *

(h) * * *

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 264.1087 of this subpart.

* * * * *

8. Section 264.1086 is amended by adding new paragraph (e)(6) to read as follows:

§ 264.1086 Standards: Containers.

* * * * *

(e) * * *

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912(a), 6924, 6925, 6912, 6922, 6923, 6935, 6936, and 6937.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

10. Section 265.1080 is amended by revising paragraph (b)(5) to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

* * * * *

11. Section 265.1084 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(ii)(D), (b)(1)(i), (b)(1)(ii) and (b)(3)(ii)(D) and by revising paragraphs (a)(3)(ii)(B), (a)(3)(iii) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) introductory text, to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limit specified in § 265.1083(c)(1) of this subpart.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(D) Sufficient information, as specified in the ''site sampling plan'' required under paragraph (a)(3)(ii)(C) of this section, shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

* * * * *

(b) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart from using air emission controls, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart are not achieved.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(D) Sufficient information, as specified in the ''site sampling plan'' required under paragraph (C) of (b)(3)(ii)this section, § 265.1084(b)(3)(ii), shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) or § 265.1083(c)(2)(i) through (c)(2)(vi) are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

* * * * *

12. Section 265.1085 is amended by replacing paragraph (h)(3) revising to read as follows:

§ 265.1085 Standards: Tanks.

* * * * *

(h) * * *

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 265.1088 of this subpart.

* * * * *

13. Section 265.1087 is amended by adding new paragraph (e)(6) to read as follows:

§ 265.1087 Standards: Containers.

* * * * *

(e) * * *

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

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Federal Register

Vol. 64, No. 13

Thursday, January 21, 1999

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 21, 1999

COMMERCE DEPARTMENT

Export Administration Bureau

Export administration regulations:

Encryption items; correction; published 1-21-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Light-duty vehicles and trucks—

On-board diagnostics requirements; published 12-22-98

Air quality implementation plans; approval and promulgation; various States:

Maryland; published 12-22-98

Hazardous waste:

Treatment, storage, and disposal facilities and hazardous waste generators—

Tanks, surface impoundments, and containers; organic air emission standards; clarification; published 1-21-99

SECURITIES AND EXCHANGE COMMISSION

Self-regulatory organizations; proposed rule changes:

Philadelphia Stock Exchange, Inc.; published 1-22-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Massachusetts; published 12-22-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

General Electric Co.; published 1-6-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Horses from Australia and New Zealand; quarantine requirements; comments due by 1-29-99; published 11-30-98

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Practice and precedure:

Procurement and nonprocurement activities; debarment and suspension policies; comments due by 1-29-99; published 12-30-98

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

End-use certificate program for imported Canadian wheat; comments due by 1-28-99; published 1-13-99

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Grain inspection:

Rice; cost of living fees, increase; comments due by 1-25-99; published 11-25-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish; comments due by 1-25-99; published 12-30-98

Gulf of Alaska groundfish; comments due by 1-25-99; published 12-30-98

Atlantic highly migratory species; comments due by 1-25-99; published 10-26-98

Northeastern United States fisheries—

Atlantic sea scallop; comments due by 1-29-99; published 12-18-98

DEFENSE DEPARTMENT

Acquisition regulations:

Repricing clause; restructuring savings; comments due by 1-29-99; published 11-30-98

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:

Contracting by negotiation; comments due by 1-27-99; published 12-28-98

Air pollutants, hazardous; national emission standards:

Pulp and paper production; comments due by 1-27-99; published 12-28-98

Air programs:

Ambient air quality surveillance—

Air quality index reporting; comments due by 1-25-99; published 12-9-98

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 1-29-99; published 12-30-98

Louisiana; comments due by 1-29-99; published 12-30-98

Hazardous waste:

Project XL program; site-specific projects—

New York State public utilities; comments due by 1-27-99; published 12-28-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Azoxystrobin; comments due by 1-25-99; published 11-25-98

Carfentrazone-ethyl; comments due by 1-25-99; published 11-25-98

Tebufenozide; comments due by 1-25-99; published 11-25-98

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:

New noncommercial educational broadcast facilities applicants; comparative standards reexamination; comments due by 1-28-99; published 12-14-98

Radio stations; table of assignements:

Iowa; comments due by 1-25-99; published 12-14-98

Radio stations; table of assignments:

Illinois; comments due by 1-25-99; published 12-14-98

Iowa; comments due by 1-25-99; published 12-14-98

South Dakota; comments due by 1-25-99; published 12-14-98

West Virginia; comments due by 1-25-99; published 12-14-98

Television broadcasting:

Digital television capacity by noncommercial licenses; ancillary or supplemen tary use; comments due by 1-28-99; published 12-14-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Soy protein and coronary heart disease; health claims; comments due by 1-25-99; published 11-10-98

Medical devices:

Class I devices; premarket notification requirements; exemption designations; comments due by 1-26-99; published 11-12-98

Dental and mammographic x-ray devices; performance standards; comments due by 1-27-99; published 10-29-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Group health plans and individual health insurance market; access, portability, and renewability requirements:

Newborns' and Mothers' Health Protection Act; comments due by 1-25-99; published 10-27-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Pecos pupfish; comments due by 1-27-99; published 12-28-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Deportation and special rule cancellation of removal for certain nationals of Guatemala, El Salvador, and former Soviet bloc countries; comments due by 1-25-99; published 11-24-98

Nonimmigrant classes:

Nonimmigrant workers (H-1B category); petitioning requirements—
Fee schedule and filing requirements; comments due by 1-29-99; published 11-30-98

JUSTICE DEPARTMENT

Prisons Bureau

Institutional management:
Smoking/no smoking areas; comments due by 1-25-99; published 11-25-98

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Group health plans; access, portability, and renewability requirements:
Newborns' and Mothers' Health Protection Act; comments due by 1-25-99; published 10-27-98

LABOR DEPARTMENT

Wage and Hour Division

Civil monetary penalties; inflation adjustment; comments due by 1-27-99; published 12-28-98

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright arbitration royalty panel rules and procedures:
Mechanical and digital phonorecord delivery rate adjustment proceeding; comments due by 1-25-99; published 12-24-98

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Leasing; interpretive ruling and policy statement; comments due by 1-27-99; published 10-29-98
Management official interlocks; clarification and statutory changes conformation; comments due by 1-27-99; published 10-29-98
Member business loans and appraisals; comments due by 1-29-99; published 11-27-98
Organization and operations—
Charitable contributions and donations; incorporation of agency policy; comments due by 1-27-99; published 10-29-98
Statutory liens; impressment and enforcement; comments due by 1-27-99; published 10-29-98
Undercapitalized federally-insured credit unions; prompt corrective action sysem development; comments due by 1-27-99; published 10-29-98

PERSONNEL MANAGEMENT OFFICE

Pay administration:
Compensation; miscellaneous changes; comments due by 1-25-99; published 11-24-98

STATE DEPARTMENT

Acquisition regulations:
Miscellaneous amendments; comments due by 1-29-99; published 11-30-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
Terrain awareness and warning system; technical standard order availability; comments due by 1-26-99; published 11-4-98
Airworthiness directives:
Agusta; comments due by 1-25-99; published 11-24-98
BFGoodrich Avionies Systems, Inc.; comments due by 1-29-99; published 12-3-98
British Aerospace; comments due by 1-29-99; published 12-22-98
Cessna; comments due by 1-26-99; published 12-2-98
Eurocopter France; comments due by 1-25-99; published 11-25-98
General Electric Co.; comments due by 1-25-99; published 11-25-98
New Piper Aircraft, Inc.; comments due by 1-27-99; published 11-25-98
Robinson Helicopter Co.; comments due by 1-25-99; published 11-24-98
Airworthiness standards:
Special conditions—
Raytheon Aircraft Co.; model 390 airplane; comments due by 1-27-99; published 12-28-98
Class D airspace; comments due by 1-25-99; published 12-24-98
Class E airspace; comments due by 1-25-99; published 12-24-98

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Seat belts use; safety incentive grants; allocations based on State seat belt use rates; comments due by 1-29-99; published 10-29-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Seat belt use; State observational surveys; uniform criteria; comments due by 1-29-99; published 9-1-98
Seat belts use; safety incentive grants; allocations based on State seat belt use rates; comments due by 1-29-99; published 10-29-98

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
DOT cylinder specifications and maintenance, requalification, and repair requirements; comments due by 1-28-99; published 10-30-98

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Distilled spirits plants:
Regulatory initiative; comments due by 1-29-99; published 11-30-98

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:
Group health plans; access, portability, and renewability requirements—
Newborns' and Mothers' Health Protection Act; comments due by 1-25-99; published 10-27-98
Newborns' and Mothers' Health Protection Act; cross reference; comments due by 1-25-99; published 10-27-98

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:
Well grounded claims/duty to assist; comments due by 1-28-99; published 10-30-98