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Tuesday
March 23, 1999

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, 208, 235, 238, 240, 241, 253, and 507

[INS No. 1976–99; AG Order No. 2207–99]

RIN 1115–AF39

Regulations Concerning the Convention Against Torture

AGENCY: Immigration and Naturalization Service, and Executive Office for Immigration Review, Justice.

ACTION: Correction to interim rule.

SUMMARY: This document contains corrections to the interim regulation, published Friday, February 19, 1999 at 64 FR 8477, relating to the Convention Against Torture.

EFFECTIVE DATE: March 22, 1999.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Immigration and Naturalization Service: Dorothea Lay, 425 I Street, NW, Washington, DC 20536, telephone number (202) 514–2895. For matters relating to the Executive Office for Immigration Review: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305–0470 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The interim regulation that is the subject of these corrections amends Department of Justice regulations by establishing procedures for raising a claim for protection from torture, as directed by the Foreign Affairs Reform and Restructuring Act of 1998. Section 2242 of that Act requires the heads of appropriate agencies to prescribe regulations to implement United States obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture). Under Article 3 of the Convention Against Torture, the United States has agreed not to ''expel, return (''refouler'') or extradite'' a person to another state where he or she would be tortured. The interim rule establishes procedures for ensuring compliance with Article 3 with respect to removal of aliens from the United States by integrating Convention Against Torture requests, as far as possible, into existing removal procedures.

Need for Correction

As published, the interim regulation contains errors which may prove to be misleading and are in need of clarification. First, this correction deletes the phrase in § 208.4(b)(2) that permits an alien whose case has been referred to the asylum office for purposes of conducting a reasonable fear determination to file a Form I–589, Application for Asylum and for Withholding of Removal, with an asylum office. This provision is being removed, because aliens who are referred for a reasonable fear screening will not be required to file such an application for purposes of the screening. An alien referred for a reasonable fear screening will only be required to file an application (Form I–589) if an asylum officer finds that the alien has a reasonable fear of persecution or torture. In such cases, the alien will be required to file an application with the immigration judge to apply for withholding of removal or deferral of removal, after he or she has been referred to an immigration judge.

Second, this correction clarifies the language in § 208.18(b)(2) of the interim rule which provides an opportunity to file a motion to reopen ''to seek'' protection under Article 3 of the Convention Against Torture for aliens who were ordered removed or whose removal orders became final prior to March 22, 1999. The phrase ''to seek'' needs to be changed to ''for the sole purpose of seeking'' in order to clarify that the reason the Department afforded the opportunity for such a motion in the interim rule was only to allow eligible aliens to move to reopen to seek protection under Article 3, and not to seek any other form of protection or relief.

Third, this correction moves the language in § 208.31(e) of the interim rule, which places a 10-day time limit on hearings before immigration judges to consider only the claim for withholding/protection against torture, to § 208.31(g). The 10-day time limit was inadvertently placed in § 208.31(e). Consistent with its intent to model the ''reasonable fear'' screening process on the ''credible fear'' screening process, the Department's intent was to place the 10-day time limit on immigration judge reviews of asylum officer ''no reasonable fear'' determinations in § 208.31(g). This is analogous to the 7-day time limit placed on immigration judge reviews of asylum officer ''no credible fear'' determinations.

Corrections

§ 208.4 [Corrected]

1. On page 8488, in the first column, in § 208.4(b)(2), the phrase ''or in the case of an alien whose case has been referred to the asylum office for purposes of conducting a reasonable fear determination under § 208.31 of this part'' is removed.

§ 208.18 [Corrected]

2. On page 8491, in the first column, in § 208.18(b)(2), line 7, the phrase ''to seek'' should read ''for the sole purpose of seeking''.

§ 208.31 [Corrected]

3. On page 8493, in the third column, in § 208.31(e), lines 12 and 13, remove the phrase ''within 10 days of the issuance of the I–863''.

4. On page 8493, in the third column, in § 208.31(g), line 15, add a new sentence ''In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I–863 with the immigration court.'' immediately before the last sentence in the introductory text.

Dated: March 17, 1999.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 99–7020 Filed 3–22–99; 8:45 am]

BILLING CODE 4410–10–M; 4410–30–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–03–AD; Amendment 39–11081; AD 99–06–17]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires installing a support bracket and a cut-out relay for the second generator control unit. This AD also requires making all the wiring additions and adjustments necessary for the above-referenced installations. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to prevent damage to electrical components because incorrectly connected cables or broken or damaged wires cause excessive voltages to the second generator, which could result in loss of electrical power during any phase of flight.

DATES: Effective June 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 62 33; facsimile: +41 41 610 33 51. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA of Switzerland reports three occurrences where the cables behind the second generator were incorrectly connected. In the above-referenced incidents, the over-voltage protection did not automatically disconnect the second generator from the electrical system when excessive voltage was experienced.

This condition, if not corrected in a timely manner, could result in electrical component damage and loss of electrical power during any phase of flight.

Relevant Service Information

Pilatus has issued Service Bulletin No. 24–009, dated September 23, 1998, which specifies procedures for installing a support bracket and a cut-out relay for the second generator control unit, and making all the wiring additions and adjustments necessary for the above-referenced installations. Modification Kit No. 500.50.12.171 includes the parts necessary to accomplish this installation and modification.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 98–537, dated December 29, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires installing a support bracket and a cut-out relay for the second generator control unit. This AD also requires making all the wiring additions and adjustments necessary for the above-referenced installations. Accomplishment of the actions of this AD would be required in accordance with the previously referenced service bulletin.

Cost Impact

The FAA estimates that 50 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 per work hour. The manufacture will provide parts to owners/operators of the affected airplanes at no cost. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $24,000, or $480 per airplane.

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. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17) 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, a written 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 notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–03–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 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 a new airworthiness directive (AD) to read as follows:

99–06–17 Pilatus Aircraft LTD.: Amendment 39–11081; 99–06–18 Docket No. 99–CE–03–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 180, certificated in any category.

Note 1: The installations and modifications required by this AD will be incorporated at the factory on Models PC–12 and PC–12/45 airplanes beginning with MSN 181.

Note 2: 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 (c) 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 within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

Note 3: The compliance time of this AD differs from that specified in Pilatus Service Bulletin No. 24–009, dated September 23, 1998, and in Swiss AD HB 98–537, dated December 29, 1998. This AD takes precedence over any other information on airplanes registered for operation in the United States.

To prevent damage to electrical components because incorrectly connected cables or broken or damaged wires cause excessive voltages to the second generator, which could result in loss of electrical power during any phase of flight, accomplish the following:

(a) Install a support bracket and a cut-out relay for the second generator control unit, and make all the wiring additions and adjustments necessary for the above-referenced installations. Modification Kit No. 500.50.12.171 includes the parts necessary to accomplish this installation and modification. Perform these actions in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 24–009, dated September 23, 1998.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) The installation and modification required by this AD shall be done in accordance with Pilatus Service Bulletin No. 24–009, dated September 23, 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 Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Swiss AD HB 98–537, dated December 29, 1998.

(e) This amendment becomes effective on June 16, 1999.

Issued in Kansas City, Missouri, on March 11, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6715 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–296–AD; Amendment 39–11085; AD 99–07–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to detect cracks in the edge frame web and doubler of the number 1 main entry door cutout; and repair, if necessary. This AD also provides for optional terminating action for the repetitive inspections. This amendment is prompted by reports indicating that fatigue cracks were found in the edge frame web and doubler at the door stop number 1 of the number 1 main entry door cutout. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the airplane.

DATES: Effective April 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the 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: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

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 Boeing Model 747 series airplanes was published in the **Federal Register** on July 15, 1998 (63 FR 38118). That action proposed to require repetitive inspections to detect cracks in the edge frame web and doubler of the number 1 main entry door cutout; and repair, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections.

Comments Received

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

Support for the Proposed Rule

Two commenters support the proposed rule.

Request to Re-Evaluate Repetitive Inspection Intervals

One commenter requests that the FAA re-evaluate the repetitive inspection intervals of the proposed AD. The commenter suggests that the FAA give consideration to the expected crack growth rate, so that there is full confidence that crack detection will occur before the cracks are able to cause a rapid decompression failure. The commenter states that the reports discussed in the Discussion section of the proposed AD indicate that in-service loads on the frame are significantly different from those experienced in testing. This difference could be due to repeated door operations, flight loads, and exposure to various other environmental stresses.

The FAA does not concur with the commenter's request to re-evaluate the repetitive inspection intervals. The FAA based the inspection threshold and repetitive inspection intervals upon physical analysis that determined the crack growth rate of the cracked structure, as well as on damage tolerance and residual strength analytical methods that provide conservative predications. The FAA has confidence that accomplishment of the inspection at the defined thresholds and repetitive intervals will provide an acceptable level of safety for the affected airplanes. The FAA considered not only those safety issues in developing an appropriate compliance time for this action, but the recommendations of the manufacturer, the availability of any necessary repair parts, and the practical aspect of accomplishing the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. Therefore, the FAA finds that no change to the final rule is necessary.

Request to Clarify Differential Pressure Adjustment Factor

One commenter states that flight cycles below 2.0 pounds per square inch (psi) differential pressure should not be counted when determining the number of flight cycles on an airplane. Boeing provided substantiating data that showed flight cycles accumulated at less than 2.0 psi cabin differential pressure has an insignificant effect on fatigue life of the subject structure. From this comment, the FAA infers that the commenter is requesting that a NOTE be added to paragraph (a) of the AD to clarify this point. The FAA concurs. Based on the manufacturer's substantiating data, the FAA has determined that for this specific structure the effect of cabin differential pressure at or below 2.0 psi is insignificant. Therefore, for the purposes of this AD, the cabin differential pressure cycles at or below 2.0 psi may be discounted from the total number of flight cycles of the airplane. The FAA has added a new NOTE to the final rule to clarify this point.

Explanation of Additional Change

The FAA has revised paragraph (c) of the final rule to allow repair of any crack in the subject area to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

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 with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 685 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 211 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that 191 airplanes are equipped with a number 1 main entry door on both the left and right sides (Group 1 airplanes), 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

inspection required by this AD on U.S. operators of these airplanes is estimated to be $22,920, or $120 per airplane, per inspection cycle.

The FAA estimates that 20 airplanes are equipped with a number 1 main entry door on the left side only (Group 2 airplanes), that it will take approximately 1 work hour 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 inspection required by this AD on U.S. operators of these airplanes is estimated to be $1,200, or $60 per airplane, per inspection cycle.

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.

Should an operator of Group 1 airplanes elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 40 work hours to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional terminating action would be $2,400 per airplane.

Should an operator of Group 2 airplanes elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 20 work hours to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional terminating action would be $1,200 per airplane.

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:

99–07–03 Boeing: Amendment 39–11085. Docket 97–NM–296–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 685 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the edge frame web and doubler of the number 1 main entry door cutout, which could result in rapid decompression of the airplane, accomplish the following:

Inspection

(a) Perform a high frequency eddy current (HFEC) (pencil probe eddy current) inspection to detect cracks in both the aft side of the lower edge frame web and the forward side of the edge frame web doubler at station 488, between stringers 25 and 26 (door stop number 1), of the number 1 main entry door cutout; in accordance with Boeing Alert Service Bulletin 747–53A2414, dated August 7, 1997; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable. For Group 1 airplanes (as identified in the alert service bulletin), the inspection shall be accomplished on both the left and right sides of the airplane. For Group 2 airplanes (as identified in the alert service bulletin), the inspection shall be accomplished only on the left side of the airplane.

Note 2: For the purposes of this AD, it is not necessary to count flight cycles accumulated at 2.0 pounds per square inch (psi) or less cabin differential pressure.

(1) For airplanes that have accumulated less than 16,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 16,000 or more total flight cycles but less than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 21,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs first.

(3) For airplanes that have accumulated 20,000 or more total flight cycles but less than 25,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 25,500 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs first.

(4) For airplanes that have accumulated 25,000 or more total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

Repetitive Inspections

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 3,000 flight cycles.

Corrective Action

(c) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2414, dated August 7, 1997; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office (ACO), to make such findings.

Note 3: The alert service bulletin emphasizes the importance of performing an open hole HFEC inspection of the inner chord of the frame within 6.0 inches of the web or doubler crack (as applicable), if the inner chord of the frame is not replaced concurrently with the web and doubler repair.

Optional Terminating Repair/Modification

(d) Accomplishment of the repair or preventative modification specified in Boeing Alert Service Bulletin 747–53A2414, dated August 7, 1997, constitutes terminating action for the repetitive inspection requirements of this AD for that repaired/modified edge frame web and doubler.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraphs (c) and (d) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2414, dated August 7, 1997. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 27, 1999.

Issued in Renton, Washington, on March 15, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6828 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–46–AD; Amendment 39–11084; AD 99–07–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters and Model SA 330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters and Model SA 330F, G, and J helicopters. This action requires inspecting the position and bonding of the main rotor blade (blade) leading edge stainless steel protective strips (strips) that were replaced by C.T.I. Dallas. This amendment is prompted by the discovery of a strip that was both mislocated and improperly bonded. The strip had been replaced by C.T.I. Dallas. This condition, if not corrected, could result in failure of the blade and subsequent loss of control of the helicopter.

DATES: Effective April 7, 1999.

Comments for inclusion in the Rules Docket must be received on or before May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, L1, and L2 helicopters and Model SA 330F, G, and J helicopters. The DGAC advises that, upon examination of a blade that had been repaired by C.T.I. Dallas, anomalies were found in both the installation and the bonding of the strip that could affect aircraft safety.

Eurocopter France has issued Eurocopter France SA 330 Service Bulletin No. 05.85 and Eurocopter France AS 332 Service Bulletin No. 05.00.43, both dated August 27, 1997, which specify checking the position and bonding of the blade strips. The DGAC classified these service bulletins as mandatory and issued AD 97–293–078(AB) and AD 97–292–064(AB), both dated October 8, 1997, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA estimates that 5 helicopters will be affected by this AD, that it will take approximately 0.4 work hours to accomplish the initial inspection, 2 work hours to accomplish each of 100 repetitive inspections of each helicopter, and 4 work hours to replace each blade, and that the average labor rate is $60 per work hour. Required parts will cost approximately $25,000 per rotor blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $85,360, assuming one blade on one helicopter is replaced and that there will be a total of 100 repetitive inspections required on each helicopter by this AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters and Model SA 330F, G, and J helicopters of the same type designs registered in the United States, this AD is being issued to prevent failure of the blade and subsequent loss of control of the helicopter. This AD requires, within 10 hours time-in-service (TIS), inspecting strips that were replaced by C.T.I. Dallas for correct position. If the inspection indicates an incorrectly-positioned strip, the blade must be removed and replaced with an airworthy blade. This AD also requires, within 100 hours TIS, and thereafter at intervals not to exceed 100 hours TIS, inspecting the strips for proper bonding. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting the position and bonding of the strips is required prior to further flight, and this AD must be issued immediately.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by

submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–46–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive to read as follows:

AD 99–07–02 Eurocopter France: Amendment 39–11084. Docket No. 98–SW–46–AD.

Applicability: Model SA 330F, G, and J helicopters, with main rotor blades, part number (P/N) 330A11–0020 (all dash numbers), P/N 330A11–0022 (all dash numbers), or P/N 330A11–0027 (all dash numbers), installed, and Model AS 332C, L, L1, and L2 helicopters, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect a mislocated or improperly bonded main rotor blade (blade) leading edge stainless steel protective strip (strip), which could result in failure of the blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS):

(1) Determine from helicopter records or log cards if the blade strips were replaced by C.T.I. Dallas. The helicopter records or log cards will have ''CTID'' stamped on them if C.T.I. Dallas replaced the strips. Blades with strips that were not replaced by C.T.I. Dallas need not comply with the remaining paragraphs of this AD.

(2) Inspect the blade strips for correct positioning on each main rotor blade by measuring the distance from the tip cap-blade junction as shown in Figure 1. This distance must be 2228 mm plus or minus 15 mm (87.7 inches plus or minus 0.6 inch). If the strip is incorrectly positioned, remove the blade and replace it with an airworthy blade within 100 hours TIS (see Figure 1).

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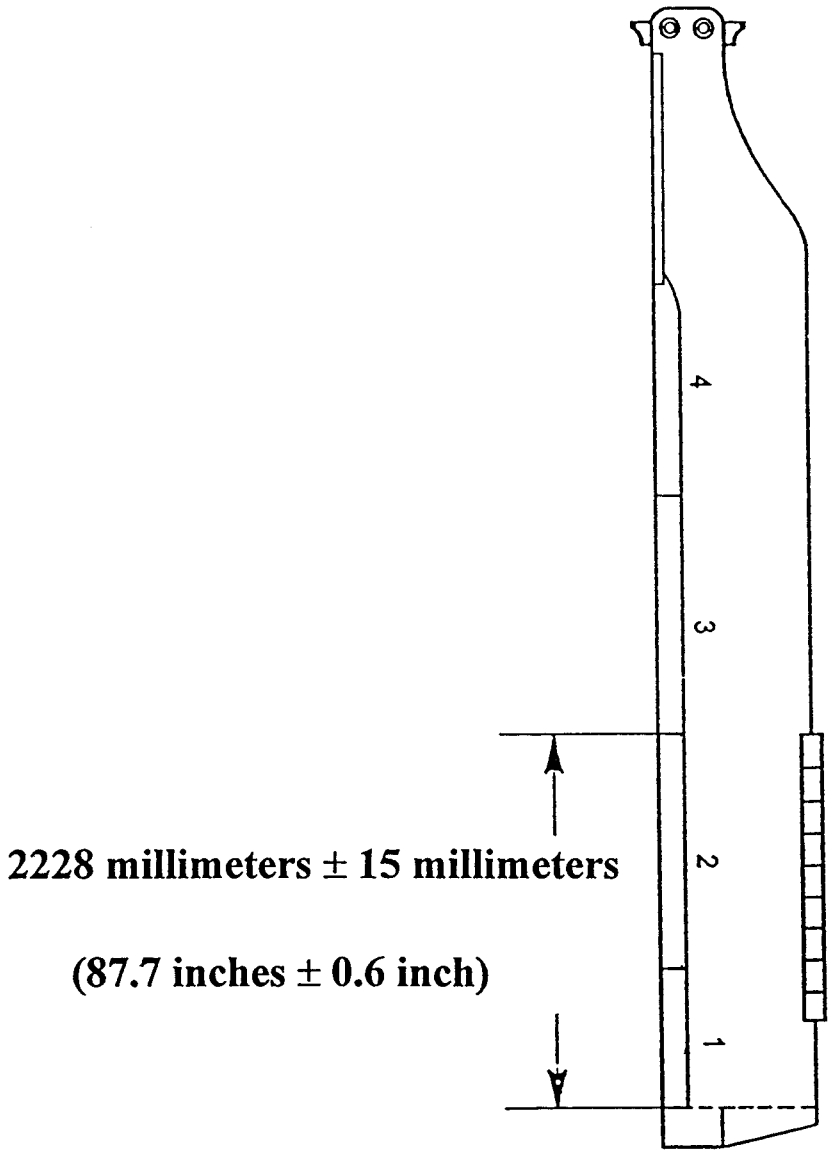

Figure 1

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(b) Within 100 hours TIS, and thereafter at intervals not to exceed 100 hours TIS, inspect the strips for correct bonding using a bonding check by sound (tapping test). If a defect is found that is outside the tolerance limits, remove the blade and replace it with an airworthy blade.

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

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

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

(e) This amendment becomes effective on April 7, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–293–078(AB) and AD 97–292–064(AB), both dated October 8, 1997.

Issued in Fort Worth, Texas, on March 12, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–6976 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–22–AD; Amendment 39–11083; AD 99–07–01]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–76C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Sikorsky Model S–76C helicopters, that currently requires, before further flight, inserting new operating limitations and performance data into the Rotorcraft Flight Manual (RFM) which require lower allowable gross weights for certain operational conditions. This amendment requires the same actions as the priority letter AD, but updates the previously referenced RFM's. This amendment is prompted by the discovery that the RFM's referenced in the priority letter AD have been revised. The actions specified by this AD are intended to provide the correct RFM references and to prevent an inability to achieve the published One-Engine-Inoperative (OEI) performance and subsequent loss of control of the helicopter.

DATES: Effective April 7, 1999. Comments for inclusion in the Rules Docket must be received on or before May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Wayne Gaulzetti, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On February 18, 1999, the FAA issued AD 99–05–01, Docket No. 99–SW–18–AD, to require, before further flight, inserting new operating limitations and performance data into the RFM which require lower allowable gross weights for certain operational conditions. That action was prompted by an incident in which the design of the engine Hydromechanical Unit (HMU) prevented the fuel metering valve from delivering the fuel flow required to obtain 30-second OEI performance. That condition, if not corrected, could result in an inability to achieve the published OEI performance and subsequent loss of the helicopter.

Since the issuance of that AD, the FAA has discovered that the RFM's referenced in the priority letter AD have been revised. The FAA is superseding the priority letter AD to eliminate any confusion that may arise from referencing RFM's that have been revised.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Model S–76C helicopters of the same type design, this AD supersedes AD 99–05–01 to require, before further flight, inserting new operating limitations and performance data into the RFM which require lower allowable gross weights for certain operational conditions. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inserting new operating limitations and performance data into the RFM is required prior to further flight and this AD must be issued immediately.

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

The FAA estimates that 17 helicopters will be affected by this proposed AD, that it will take approximately 0.5 work hour to insert the pages into the RFM, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $510.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–22–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive (AD), Amendment 39–11083, to read as follows:

AD 99–07–01 Sikorsky Aircraft Corporation: Amendment 39–11083. Docket No. 99–SW–22–AD. Supersedes Priority Letter AD 99–05–01, Docket No. 99–SW–18–AD.

Applicability: Model S–76C helicopters, with Turbomeca Arriel 2S1 engines with an engine Hydromechanical Unit (HMU), part number 0.292.92.822.0, 0.292.92.808.0, 0.292.92.813.0, or 0.292.92.828.0, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) 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 before further flight, unless accomplished previously.

To prevent an inability to achieve the published One-Engine Inoperative performance and subsequent loss of the helicopter, accomplish the following:

(a) Insert the following into the Operating Limitations section and Performance Data section, as appropriate, of Rotorcraft Flight Manual (RFM) SA 4047–76C–10:

RFM (Basic), original approval date June 19, 1996, Revision 7, dated February 1, 1999;

RFM Supplement No. 8, original approval date August 28, 1997, Revision 1, dated February 1, 1999; and

RFM Supplement No. 9, original approval date August 28, 1997, Revision 1, dated February 1, 1999.

(b) This AD revises the Operating Limitations section and Performance Data section of the RFM by requiring lower allowable gross weights for certain operational conditions.

(c) 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, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

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

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

(e) This amendment becomes effective on April 7, 1999.

Issued in Fort Worth, Texas, on March 12, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–6977 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–203–AD; Amendment 39–11086; AD 98–13–35 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects information in an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes, that currently requires repetitive high frequency eddy current inspections of certain areas of the fuselage to detect cracks of the skin and/or longeron, and various follow-on actions. That AD also requires installation of a preventative modification, which terminates the repetitive inspections. The actions specified in that AD are intended to prevent fatigue cracks, which could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane. This amendment corrects the requirements of the current AD by indicating the specific area in which the subject inspection must be conducted. This amendment is prompted by communication received from the manufacturer that the current requirements of the AD are different than the service information referenced as the appropriate service information in the current AD.

EFFECTIVE DATE: July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On June 17, 1998, the FAA issued AD 98–13–35, amendment 39–10626 (63 FR 34585, June 25, 1998), which is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. That AD requires repetitive high frequency eddy current inspections of certain areas of the

fuselage to detect cracks of the skin and/or longeron, and various follow-on actions. That AD also requires installation of a preventative modification, which terminates the repetitive inspections. That action was prompted by reports indicating that, due to material fatigue caused by installation preload and cabin pressurization cycles, fatigue cracks were found in the skin and longerons of the fuselage. The actions required by that AD are intended to prevent such fatigue cracks, which could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 98–13–35, the FAA has received information from the manufacturer that the specified area of the initial inspection requirements of paragraph (a) of that AD differs from the service information provided in McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993 (cited in the AD as the appropriate source of service information for accomplishment of the required actions).

The FAA's intent in AD 98–13–35 was to require the actions described in McDonnell Douglas DC–9 Service Bulletin 53–235. In order to prevent operators from misinterpreting the specific area of the initial inspection, the FAA finds that the inspection requirements of paragraph (a) must be revised to specify inspection only of the fuselage, in lieu of the fuselage skin and/or longeron. Accordingly, this action revises paragraph (a) of the existing AD to remove reference to inspection of the longeron and to limit the area that is subject to the inspection (skin between stations Y=160.000 and Y=218.000; skin at the longeron attachments).

Action is taken herein to clarify and correct these requirements of AD 98–13–35 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains July 30, 1998.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10626 (63 FR 34585, June 25, 1998), and by adding a new airworthiness directive (AD), amendment 39–11086, to read as follows:

98–13–35 R1 McDonnell Douglas: Amendment 39–11086. Docket 96–NM–203–AD. Revises AD 98–13–35, Amendment 39–10626.

Applicability: Model DC–9–10, −20, −30, −40, and −50 series airplanes; Model DC–9–81 (MD–81), −82 (MD–82), −83 (MD–83), and −87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993; 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 prevent fatigue cracks in the skin and longerons of the fuselage, which could result in loss of the structural integrity of the fuselage and, consequently, lead to rapid depressurization of the airplane, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) inspection of the external areas of the fuselage to detect cracks of the skin between stations Y=160.000 and Y=218.000, and of the skin at the longeron attachments between stations Y=160.000 and Y=180.000, longeron 4 left and longeron 5 left, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235 dated September 15, 1993. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

Note 2: Where there are differences between this AD and the referenced service bulletin, the AD prevails.

(1) For airplanes other than those identified in paragraph (a)(2) of this AD: Inspect prior to the accumulation of 30,000 total landings, or within 8,000 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that have been inspected previously in accordance with Task C46–53300 of the Corrosion Prevention and Control Program (CPCP), as required by AD 92–22–8–R1, amendment 39–8591, within 6,000 flight cycles prior to the effective date of this AD: Inspect within 12,000 landings after the effective date of this AD.

(b) *Condition 1 (No Cracks).* If no crack is detected during any inspection required by this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993.

(1) *Condition 1, Option I (Repetitive Inspection).* Repeat the HFEC inspection required by paragraph (a) of this AD, and the aided visual inspection specified in paragraph 2.E. of the Accomplishment Instructions of the service bulletin, at intervals not to exceed 10,000 landings.

(2) *Condition 1, Option II (Terminating Action Modification).* Accomplish the preventative modification installation of clips and doublers between stations Y=160.000 and Y=218.000, in accordance with the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) *Condition 2 (Skin Cracks).* If any skin crack is detected during any inspection required by this AD, prior to further flight, repair it in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. After repair, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(d) *Condition 3 (Longeron Cracks).* If any longeron crack is detected during any inspection required by this AD, prior to further flight, repair it in accordance with McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. After repair, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(e) Prior to the accumulation of 100,000 total landings, or within 4 years after the effective date of this AD, whichever occurs later, accomplish the preventative modification specified in paragraph 2.J. of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 53–235, dated September 15, 1993. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(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, Los

Angeles 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, Los Angeles ACO.

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

Special Flight Permits

(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 effective date of this amendment remains July 30, 1998.

Issued in Renton, Washington, on March 16, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6980 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–33–AD; Amendment 39–11087; AD 99–05–04]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 99–05–04 that was sent previously to all known U.S. owners and operators of all EMBRAER Model EMB–145 series airplanes by individual notices.

This AD requires repetitive inspections to detect cracking or failure of the rod ends of the aileron power control actuator (PCA), and corrective actions, if necessary. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking or failure of the rod ends of the aileron PCA, which could result in reduced controllability of the airplane.

DATES: Effective March 29, 1999, to all persons except those persons to whom it was made immediately effective by emergency AD 99–05–04, issued February 19, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On February 19, 1999, the FAA issued emergency AD 99–05–04, which is applicable to all EMBRAER Model EMB–145 series airplanes.

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on all EMBRAER Model EMB–145 series airplanes. The DAC advises that rod ends of the aileron power control actuator (PCA) failed on two airplanes. One rod end cracked and failed at the aileron connection point, and one at the wing connection point. Such failure of the rod ends of the aileron PCA, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145–27-A054, Change 01, dated February 17, 1999, which describes procedures for repetitive detailed visual inspections to detect cracking or failure of the rod ends of the PCA at the aileron and wing connection points, and corrective actions, if necessary. The DAC classified this alert service bulletin as mandatory and issued Brazilian airworthiness directive 1999–02–01R1, dated February 18, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 99–05–04 to detect and correct cracking or failure of the rod ends of the aileron PCA, which could result in reduced controllability of the airplane. The AD requires repetitive detailed visual inspections to detect cracking or failure of the rod ends of the aileron PCA, and corrective actions, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on February 19, 1999, to all known U.S. owners and operators of all EMBRAER Model EMB–145 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to

section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–33–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–05–04 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–11087. Docket 99–NM–33–AD.

Applicability: All Model EMB–145 series airplanes, 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 detect and correct cracking or failure of the rod ends of the aileron power control actuator (PCA), which could result in reduced controllability of the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Within 24 hours (1 day) after the effective date of this AD, perform a detailed visual inspection to detect cracking or failure of the rod ends of the PCA at the aileron and wing connection points, in accordance with EMBRAER Alert Service Bulletin 145–27–A054, Change 01, dated February 17, 1999. Repeat the inspection in accordance with the alert service bulletin thereafter at intervals not to exceed 3 days or 25 flight hours, whichever occurs later.

Corrective Actions

(b) If any cracked or failed rod end is detected during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, replace the aileron PCA with a new part having the same part number, in accordance with EMBRAER Alert Service Bulletin 145–27–A054, Change 01, dated February 17, 1999.

Reporting Requirement

(c) Within 10 days after the replacement of any aileron PCA in accordance with paragraph (b) of this AD, submit a report of the cracked or failed rod end to the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; fax (770) 703–6097. 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.

Alternative Methods of Compliance

(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, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

Special Flight Permits

(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.

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with EMBRAER Alert Service Bulletin 145–27–A054, Change 01, dated February 17, 1999. 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 1999–02–01R1, dated February 18, 1999.

(g) This amendment becomes effective on March 29, 1999, to all persons except those persons to whom it was made immediately effective by emergency AD 99–05–04, issued February 19, 1999, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 16, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6981 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 31, 39, 111, 112, 115, 140, 151, 152, 160, 162, 226, 256, 273, 275 and 276

RIN 1076–AD88

Correction of Codification Errors in 25 CFR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Technical correction.

SUMMARY: The Bureau of Indian Affairs is publishing this rule at the request of the Office of the Federal Register to correct several technical errors at various locations in 25 CFR. The errors include incorrect cross references and incorrect paragraph designations. None of the corrections will affect the substance of any provision in 25 CFR.

EFFECTIVE DATE: This rule is effective on March 23, 1999.

ADDRESSES: Mail comments to Laura Cloud, Bureau of Indian Affairs, 1849 C Street NW, MS 4657–MIB, Washington, D.C. 20240. Comments may be hand delivered to the same address from 9:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Strylowski, Office of Regulatory Affairs, at 202–208–3071 or e-mail john__strylowski@ios.doi.gov.

SUPPLEMENTARY INFORMATION: The Office of the Federal Register has asked the Department of the Interior to correct technical errors at various locations in 25 CFR. These errors are of three kinds. First, there are errors in designating paragraphs (for example, a section may have more than one paragraph designated as ''(g)''). Second, there are erroneous cross references. For example, there are currently several citations in 25 CFR to parts 174 and 261, both of which have been removed from 25 CFR. Finally, two previous corrections to part 226 were incorrectly worded, resulting in changes not being made. The affected sections are §§ 226.21(f) and 226.25(b). BIA published corrections to these sections in a final rule on August 14, 1990, at 55 FR 33112. The Office of the Federal Register has inserted editorial notes into 25 CFR to explain the corrections that BIA requested and the reasons that they could not be made. The document we are publishing today will ensure that the corrections are made properly so that the Office of the Federal Register can remove the editorial notes.

In order to make some of the changes, we have had to rewrite small portions of the text. An example of this is the definition of the term ''standard housing'' in § 256.2. The rewrite was necessary in this case because in order to change the designations within the definition we had to change the original wording. We have carefully reworded each rewrite to preserve the original meaning.

Because these changes are technical and do not affect the substance of 25 CFR, we are publishing this rule as a final rule with no opportunity for public comment. We are doing this in accordance with the provisions of 5 U.S.C. 553(b)(3)(B), which provides that an agency need not publish a proposed rule if it finds that doing so would be ''impracticable, unnecessary, and contrary to the public interest.'' Since delaying the effective date of these corrections through use of the normal rulemaking process would be contrary to the public interest, we are publishing these changes as a final rule.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because it makes technical changes that do not affect the substance of the rules there is no economic effect at all, other than to improve the utility of the rules for users.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Federalism (E.O. 12612)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

List of Subjects

25 CFR Parts 31, 39, 273, 275, and 276

Indians, Indians—education.

25 CFR Parts 111, 112, and 115

Indians, Indians—claims.

25 CFR Part 140

Indians, Indians—business and finance.

25 CFR Parts 151, 152, 162, and 226

Indians, Indians—lands.

25 CFR Part 160

Indians, Indians—law.

25 CFR Part 256

Indians, Housing, Home improvement, Low and moderate income housing.

Dated: March 9, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

For the reasons set out in the preamble, 25 CFR parts 31, 39, 111, 112, 115, 140, 151, 152, 160, 162, 226, 256, 273, 275 and 276 are amended as follows:

PART 31—FEDERAL SCHOOLS FOR INDIANS

1. The authority for part 31 continues to read as follows:

Authority: Sec. 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted.

§ 31.4 [Amended]

2. In the cross references at the end of § 31.4, ''§§ 11.65 and 11.66'' is revised to read ''§ 11.424.''

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM

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

Authority: 25 U.S.C. 13; 25 U.S.C. 2008.

§ 39.22 [Amended]

4. In § 39.22(b), the words ''part 271'' are revised to read ''part 900.''

§ 39.31 [Amended]

5. In § 39.31(b), the words ''part 271'' are revised to read ''part 900'' both places they appear.

§ 39.53 [Amended]

6. In § 39.53(b), the words ''part 271'' are revised to read ''part 900.''

§ 39.54 [Amended]

7. In § 39.54(b), the words ''part 271'' are revised to read ''part 900.''

PART 111—ANNUITY AND OTHER PER CAPITA PAYMENTS

8. The authority for part 111 continues to read as follows:

Authority: 5 U.S.C. 301.

§ 111.1 [Amended]

9. In the cross references at the end of § 111.1, ''§§ 11.30 through 11.32(c)'' is revised to read ''subpart G of part 11.''

PART 112—REGULATIONS FOR PRO RATA SHARES OF TRIBAL FUNDS

10. The authority for part 112 continues to read as follows:

Authority: Sec. 2, 34 Stat. 1221, as amended; 25 U.S.C. 121.

11. In the cross references following the table of contents to part 112, ''§§ 11.30 through 11.32'' is revised to read ''subpart G of part 11.''

PART 115—INDIVIDUAL INDIAN MONEY ACCOUNTS

12. The authority for part 115 continues to read as follows:

Authority: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2, 9; 43 U.S.C. 1457.

§ 115.9 [Amended]

13. In the cross references at the end of § 115.9, ''§§ 11.26'' is revised to read ''§ 11.208.''

PART 140—LICENSED INDIAN TRADERS

14. The authority for part 140 continues to read as follows:

Authority: Sec. 5, 19 Stat. 200, Sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544, 18 U.S.C. 437; 25 U.S.C. 2 and 9, and 5 U.S.C. 301, unless otherwise noted.

15. The cross reference following § 140.25 is revised to read as follows:

§ 140.25 Trade in antiquities prohibited.

* * * * *

CROSS REFERENCES: For regulations pertaining to archaeological resources, see part 262 of this chapter. For regulations of the Bureau of Land Management regarding antiquities, see 43 CFR part 3.

PART 151—LAND ACQUISITIONS

16. The authority for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967 as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

§ 151 [Amended]

17. In the cross references following the table of contents for part 151, the words ''part 272'' are revised to read ''part 900.''

§ 151.15 [Amended]

18. In § 151.15(a) ''§ 151.11(2)(c)'' is revised to read ''§ 151.11(c).''

PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

19. The authority for part 152 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply Sec. 7, 32 Stat. 275, 34 Stat. 1018, Sec. 1, 35 Stat. 444, Sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, Sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, Sec. 2, 40 stat. 606, 68 Stat. 358, 69 Stat. 666: 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.

§ 152 [Amended]

20. In the cross references following the table of contents for part 152, ''§§ 11.30 through 11.32C'' is revised to read ''subpart G of part 11.''

PART 160—INCLUSION OF LIENS IN ALL PATENTS AND INSTRUMENTS EXECUTED

21. The authority for part 160 continues to read as follows:

Authority: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

§ 160.1 [Amended]

22. In the cross references at the end of § 160.1, ''parts 174, 134, and 137'' is revised to read ''parts 134 and 137.''

PART 162—LEASING AND PERMITTING

23. The authority for part 162 continues to read as follows:

Authority: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply Sec. 3, 26 Stat. 795, Sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, Sec. 4, 36 Stat. 856, Sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, Sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, Sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, Sec. 55, 49 Stat. 781, Sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 413, 415, 415a, 415b, 415c, 415d, 477, 635.

§ 162.13 [Amended]

24. In § 162.13(a), ''Except as provided in part 174 of this chapter, any lease covering'' is revised to read ''Any lease covering.''

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

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

Authority: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 2(a), 92 Stat. 1660.

§ 226.21 [Amended]

26. In § 226.21, the second sentence of paragraph (f) is revised to read as follows:

§ 226.21 Procedure for settlement of damages claimed.

* * * * *

(f) * * * The decision shall be in writing and shall be served forthwith upon the parties in interest.* * *

* * * * *

§ 226.25 [Amended]

27. In § 226.25, paragraph (b) is revised to read as follows:

§ 226.25 Gas well drilled by oil lessees and vice versa.

* * * * *

(b) Oil well to be turned over to oil lessee. If the gas lessee drills an oil well, he/she must immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the superintendent.

(1) If the oil lessee does not, within 45 days after receipt of notice and cost of drilling, elect to take over the well, he/she must immediately notify the gas lessee. From that point, the superintendent must approve the disposition of the well, and any gas produced from it.

(2) If the oil lessee chooses to take over the well, he/she must pay to the gas lessee:

(i) The cost of drilling the well, including all damages paid; and

(ii) The cost in place of casing and other equipment.

(3) If the oil lessee and the gas lessee cannot agree on the cost of the well, the superintendent will apportion the cost between the oil and gas lessees. If the lessees do not accept the apportionment, the oil or gas lessee who drilled the well must plug the well.

* * * * *

PART 256—HOUSING IMPROVEMENT PROGRAM

28. The authority for part 256 continues to read as follows:

Authority: 42 Stat. 208. (25 U.S.C. 13).

§ 256.2 [Amended]

29. In § 256.2, the definition of ''Service housing office is removed,'' the definition of ''Servicing housing office'' is added, and the definition of ''Standard Housing'' is revised to read as follows:

§ 256.2 Definitions.

* * * * *

Servicing housing office means the tribal housing office or bureau housing assistance office administering the Housing Improvement Program in the service area in which the applicant resides.

Standard Housing means a dwelling that is decent, safe, and sanitary.

(1) Except as provided in paragraph (2) of this definition, standard housing must meet each of the following conditions:

(i) General construction must conform to applicable tribal, county, State, or national codes and to appropriate building standards for the region;

(ii) The heating system must have the capacity to maintain a minimum temperature of 70 degrees in the dwelling during the coldest weather in the area;

(iii) The heating system must be safe to operate and maintain and deliver a uniform heat distribution;

(iv) The plumbing system must include a properly installed system of piping and fixtures;

(v) The electrical system must include wiring and equipment properly installed to safely supply electrical energy for lighting and appliance operation;

(vi) Occupants per dwelling must not exceed these limits:

(A) Two bedroom dwelling: Up to four persons;

(B) Three-bedroom dwelling: Up to seven persons;

(C) Four-bedroom dwelling: Adequate for all but the very largest families;

(vii) The first bedroom must have at least 120 sq. ft. of floor space and additional bedrooms have at least 100 sq. ft. of floor space each;

(viii) The house site must provide economical access to utilities and must be easy to enter and leave; and

(ix) Aesthetics and access to school bus routes must be considered.

(2) The following exceptions apply to the standards in paragraph (1) of this definition:

(i) If access to a particular utility is not available and there is no prospect of access becoming available, then the standard relating to that utility does not apply; and

(ii) In regions of severe climate, the size of the house may be reduced to meet the region's applicable building standards.

* * * * *

30. In § 256.6, paragraph (e) is revised to read as follows:

§ 256.6 Am I eligible for the Housing Improvement Program?

* * * * *

(e) You meet the ownership requirements for the assistance needed, as defined in § 256.8, § 256.9, or § 256.10;

* * * * *

PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT

31. The authority for part 273 continues to read as follows:

Authority: Secs. 201–203, Pub. L. 93–638, 88 Stat. 2203, 2213–2214 (25 U.S.C. 455–457), unless otherwise noted.

§ 273.1 [Amended]

32. In § 273.1(c), the words ''part 271'' are revised to read ''part 900.''

PART 275—STAFFING

33. The authority for part 275 continues to read as follows:

Authority: Sec. 502, Pub. L. 91–648, 84 Stat. 1909, 1925 (42 U.S.C. 4762); Sec. 105, Pub. L. 93–638, 88 Stat. 2203, 2208–2210 (25 U.S.C. 450i); 26 U.S.C. 48.

§ 275.3 [Amended]

34. In § 275.3(b), the words ''part 271'' are revised to read ''part 900.''

PART 276—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS

35. The authority for part 276 continues to read as follows:

Authority: 34 CFR 256; sec. 104, Pub. L. 93–638, 88 Stat. 2203, 2207 (25 U.S.C. 450h).

§ 276.11 [Amended]

36. In § 276.11, in paragraphs (b) introductory text, (b)(1), and (c) introductory text, the words ''part 272'' are revised to read ''part 900.''

[FR Doc. 99–6695 Filed 3–22–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–022]

RIN 1218–AB55

Dipping and Coating Operations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA's standards for dipping and coating operations, codified at sections 1910.108 and 1910.94(d), are designed to protect employees from fire, explosion, and other hazards associated with these operations. On April 7, 1998 (63 FR 16918), OSHA published proposed revisions to these standards in the **Federal Register**. The Federal Register announcement requested comments on the proposed rule, as well as on three major issues identified by OSHA. Based on these comments and other considerations, the Agency has developed the final standard to accomplish several goals: To rewrite the former standards in plain language; to consolidate the former requirements in sequential sections (sections 1910.122 through 1910.126 in subpart H of part 1910); and to update the former standards to increase the compliance options available to employers. In addition to achieving these goals, OSHA concludes that the final rule being published today will enhance employee protection by making it more understandable and useful to employers and employees and more flexible and performance-oriented than the former rules. The final rule accomplishes these goals without increasing the regulatory burden of employers or reducing employee protection.

DATES: The final rule becomes effective April 22, 1999. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of April 22, 1999.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Director, Office of Public Affairs, Room N–3647, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–1999. For additional copies of this Federal Register notice contact: OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–1888. Electronic copies of this Federal Register notice, as well as news releases, fact sheets, and other relevant documents, can be obtained from OSHA's web page on the Internet at http://www.OSHA.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In May 1995, President Clinton asked all Federal regulatory agencies to review their regulations to determine if they were inconsistent, duplicative, outdated, or in need of being rewritten in plain language. In response, OSHA conducted a line-by-line review of its standards, and committed the Agency to eliminating those found to be unnecessary, duplicative, or inconsistent and to rewriting those found to be complex and outdated. The Agency's dip-tank standards were identified by that review as needing clarification.

OSHA chose to rewrite these standards in plain language because dip tanks pose serious hazards to employees engaged in dipping and coating operations. There are hundreds of thousands of dip tanks in America. Wherever metals are coated, furniture is stripped and refinished, automobiles are repaired, aircraft are maintained, and leather is tanned, dip tanks are an essential part of the process. The liquids used to perform these operations are often dangerous, both from a safety and health standpoint. These liquids include flammable substances such as acetone, corrosive materials such as cyanide acids and chromic acids, and chronic toxins such as perchloroethylene and methylene chloride. Most facilities with dip tanks are small: OSHA estimates that the majority of these facilities have fewer than 20 employees. Industries with large numbers of dip tanks include automobile manufacturing, electronic manufacturing, electroplating, defense, transportation equipment, computer manufacturing, automobile repair, paint stripping, and other service industries.

The final rule does not change the technical substance of the former standards or alter the regulatory obligations placed on employers or the safety and health protections provided to employees. OSHA believes, moreover, that the performance-oriented language of the final rule will facilitate compliance because it gives employers more compliance options than they had under the former standards.

II. Summary and Explanation of the Final Rule

This section consists of five parts. Part 1 summarizes the comments received by OSHA on the three issues raised in the proposal. The issues are listed together, followed by the comments on each issue and OSHA's responses. The second part summarizes the comments on specific paragraphs of the proposal, as well as OSHA's discussion of the comments. In the third part, OSHA responds to general comments made about the rulemaking, while the fourth part describes technical and editorial revisions made by OSHA to the final regulatory text. Part 5 consists of tables that compare provisions of the former and final rules.

Note that OSHA has redesignated the section numbers in the final rule as 1910.122 through 1910.126, instead of 1910.121 through 1910.125, as proposed. This revision is explained more fully in Part 4, paragraph a.

Part 1

OSHA received the following comments on the three issues raised in the proposal.

(a) *The first issue,* which addressed whether the plain-language version of the final rule reduces employee protections or increases employer burden when compared with the former standards, received only one comment (Ex. 4–13). This commenter stated that the plain-language version improved employee protection because the performance-oriented language would ''accommodate technical advancement in industries impacted by the standard.'' This comment substantiates the Agency's finding that the proposed standard ''will enhance employee protection by * * * providing additional compliance flexibility to employers.'' (63 FR 16918)

(b) *The second issue,* which concerned commenters' preference for the traditional format or question-and-

answer format (both of which were proposed), elicited five comments. One commenter (Ex. 4–6) had no preference, stating that ''either plain language alternative format * * * [is] acceptable and more user friendly than the current standard.'' Another commenter (Ex. 4–7) preferred the traditional format but provided no rationale for this preference. Three commenters (Exs. 4–3, 4–5, and 4–13) preferred the traditional format on the grounds that it simplified the regulatory text and made it easy to follow. One of these commenters (Ex. 4–5) noted that the paragraph headings in the traditional format are ''informative and useful; they should make it easier [to find information quickly].'' Another commenter (Ex. 4–12) objected to the question-and-answer format because it is ''redundant and more time consuming to review,'' adding that locating a specific requirement depends too much on the reader's asking of the correct question. Additionally, this commenter stated that existing training programs ''are built around the traditional format, and a change of format would require a more comprehensive approach than proposed here.'' One commenter (Ex. 4–8) favored the question-and-answer format because the simple paragraphs are ''devoted to a single, unified topic'' and ''are more 'user friendly' and thus will be more easily understood.''

Existing Federal policy favors the use, when appropriate, of the question-and-answer format and personal pronouns to enhance understandability and directness. Based on a recent memorandum from President Clinton (Presidential Memorandum for the Heads of Executive Departments and Agencies, June 1, 1998) and additional guidance received from the National Partnership for Reinventing Government (Vice Presidential Memorandum to the Heads of Executive Departments and Agencies, July 29, 1998), OSHA decided that the final rule will follow the question-and-answer plain-language format. To address commenters' concerns (Exs. 4–3, 4–5, and 4–13), OSHA removed proposed sentences that were repeated in both the question and answer to the question, shortened the questions, and made them specific to the topic of the provision.

(c) *The third issue* raised in the proposal asked whether provisions of the former dip-tank standards should be updated. Only one comment (Ex. 4–12) was received on this topic, and this commenter stated that there was no need to update the standards further. The Agency, therefore, concludes that no further updating of the dip-tank standards is necessary at this time.

Part 2

OSHA received the following comments on specific proposed paragraphs.

Proposed paragraphs 1910.122(a) and (b) (final paragraphs 1910.123(a) and (b)), which addressed the scope of the rule, received one comment (Ex. 4–4). This commenter stated that the two paragraphs should be combined because ''[s]eparating them serves no purpose.'' OSHA has not combined paragraphs (a) and (b) in the final rule because the Agency believes it is appropriate to separate provisions establishing the final rule's applicability from those providing examples of covered operations.

Four commenters (Exs. 4–6, 4–7, 4–9, and 4–11) were concerned that the scope of the proposed rule had been enlarged over that of the former standards because the proposal used the phrase ''liquid other than water.'' For example, one commenter (Ex. 4–6) interpreted this phrase as including, for example, water-based materials. According to this commenter, ''the hazard associated with materials having high flash points (e.g. greater than 140 or 200 degrees Fahrenheit; Class II or Class IIIA liquids), and low toxicity, do [sic] not appear to warrant inclusion in this type of a standard. This can include numerous water-based materials that can be used for cleaning, coating or treating.''

Another commenter (Ex. 4–7) argued that the scope of the proposed rule was broader than that of the former standard because the hazard assessment required by paragraph (d)(2) of former section 1910.94 had been removed and ''[w]ithout a hazard assessment the proposed rule's coverage would significantly expand and add burdensome requirements where there is little hazard.'' Another commenter (Ex. 4–9) stated, ''Logically, the proposed rule should [require employers to] assess the severity and exposure to a hazard based on existing OSHA requirements (Z table). Then if the hazard or exposure warranted employee protection, the proposed rules would be required.''

The major concern of these commenters was that the scope of the rule had been broadened beyond that of former sections 1910.94(d) and 1910.108. In situations where the ventilation requirements of former paragraph 1910.94(d) did not apply (because employers were using cleaning solutions such as soap and water in their dip tanks), the commenters assumed that the training, personal-protection, hygiene-facilities, physical-examination, and first-aid requirements also did not apply. This assumption is not correct. Under the former rule (1910.94(d)(2)) and the final rule (1910.124(b)), even if a dipping or coating operation is exempt from the ventilation requirements, it may still be covered by other provisions, depending on the characteristics of the operation. For example, the hygiene facilities provision of the final rule applies when employees are exposed to ''liquids that may burn, irritate, or otherwise harm their skin''; this clarification is explained below in OSHA's response to the comments on proposed paragraph 1910.123(g). Similarly, the physical-examination and first-aid requirements also apply when specific conditions exist (see the discussion of paragraph 1910.123(h) below). As discussed below, these provisions are no broader in scope in the final rule than they were before.

In addition, the final rule cross-references the personal-protective equipment (PPE) requirements of subpart I, instead of including them in the rule. The effect of this change, which is described in connection with the discussion below of paragraphs 1910.123(e) and (f), is that the final rule's PPE requirements will only be triggered when the contents of the dip tank warrant use of PPE.

Proposed paragraph 1910.122(d) (final paragraph 1910.123(d)) defined ''approved'' to mean that the ''equipment is listed or approved by a nationally recognized testing laboratory as defined by § 1910.7.'' One commenter (Ex. 4–4) recommended that the definition be revised to ''allow equipment and systems that can be shown to meet a recognized design standard.'' OSHA has not adopted this suggestion because 29 CFR 1910.7 ensures that a nationally recognized testing laboratory (NRTL) has evaluated approved equipment and found it to be safe.

In defining the term ''approved,'' OSHA refers to section 1910.7 because it permits uniform and high-quality evaluation of health and safety equipment required by OSHA standards. OSHA has recognized many NRTLs under 29 CFR 1910.7 to provide equipment manufacturers with testing services; a list of these laboratories can be obtained from OSHA's Technical Support Directorate. In addition, this commenter is recommending a substantive revision to the former standards that OSHA has not considered, and which, therefore, is beyond the scope of this rulemaking.

Proposed paragraph 1910.122(d) (final paragraph 1910.123(d)) defined

''combustible liquid'' as ''a liquid having a flash point of 100° F (37.8° C) or above.'' One commenter (Ex. 4–1) recommended that ''[t]he * * * definition should be expanded to state 'but less than 200° F,' '' and another commenter (Ex. 4–7) stated that Class III liquids should not be covered and Class II liquids should be defined as having ''a flash point above * * * 100 degrees Fahrenheit and below 140 degrees Fahrenheit.''

OSHA has retained the proposed definition of ''combustible liquids'' in the final rule because it is consistent with the definition of such liquids in section 1910.106(a) (as well as NFPA 34–1995); in addition, the regulated community has considerable experience using this definition when managing flammable and combustible liquids. However, the Agency also has added a statement at the beginning of section 1910.125 of the final rule excepting combustible liquids with flashpoints of 200° F or above from the rule unless the liquid is heated as part of the dipping or coating operation or a heated object is placed in an unheated liquid having such a flashpoint. This exception, which responds to the comments on this provision, is warranted because no combustible or explosive vapors are produced under these conditions.

Proposed paragraph 1910.122(d) (final paragraph 1910.123(d)) defined ''dip tank'' as ''a tank, vat, or container that holds liquids used for dipping or coating operations. In dipping or coating operations, an object may be immersed totally or partially in a dip tank, or held in the vapor above the dip tank.'' There were four comments on this definition (Exs. 4–1, 4–6, 4–7, and 4–10). One commenter (Ex. 4–1) observed that objects are often held ''within the vapor layer, which is above the liquid level and below the condensing coils *within* the tank.'' OSHA agrees with this commenter and, in the final rule, revised the last part of the second sentence of the definition to read ''or suspended in a vapor coming from the dip tank.''

This commenter (Ex. 4–1) also noted that OSHA Instruction STD 1–5.5 states that parts-washing sinks are not dip tanks. Other commenters (Exs. 4–6, 4–7, and 4–10) argued that containers having a capacity or surface area below a specific level (e.g., 60 gallons or 25 square feet) should not be covered by the definition.

The proposed definition of ''dip tank'' was adopted from those in former paragraphs 1910.94(d)(1)(i) and 1910.108(a)(1), which contained no exceptions based on the dip tank's type, capacity, or surface area. Therefore, all containers, regardless of capacity or surface area, are covered by the applicable requirements of the final rule; to exempt some tanks based on these considerations would diminish the protections provided to employees by the final rule. The Agency also notes that OSHA Instruction STD 1–5.5, which was published in 1978, pertained to parts-washing tanks that were supplied with drains. The use of such tanks is no longer permitted by Environmental Protection Agency rules, which prohibit the draining of flammable or combustible liquids into sewer systems or ground-water reservoirs. Consequently, OSHA will soon issue a directive canceling STD 1–5.5.

Another commenter (Ex. 4–7) recommended that ''OSHA should use [its] existing definition [of dip tanks] in 29 CFR 1910.108(a)(1).'' In response, OSHA notes that the definition of ''dip tank'' in former paragraph 1910.108(a)(1) covered only flammable and combustible liquids, while other liquids were covered by the definition in former paragraph 1910.94(d)(1)(i). The final standard's definition of dip tank combines the coverage and operations addressed by the definitions in both sections 1910.94(d) and 1910.108.

Proposed paragraph 1910.122(d) (final paragraph 1910.123(d)) defined ''vapor area'' as ''any space containing dipping or coating operations, its drain boards, and associated drying or conveying equipment.'' Four commenters (Exs. 4–1, 4–2, 4–4, and 4–7) stated that the definition was vague and should be revised to ''provide an objective and simple test to determine the boundaries of a 'vapor area' so that employers complying with the standard can clearly establish the point in their operations at which such precautions as explosion-proof or intrinsically electrical equipment must be used'' (Ex. 4–2). A second commenter (Ex. 4–4) stated that ''[t]he definition [of vapor area] should include any associated equipment that might operate above 25% of the LFL, as is the case in NFPA 34's definition in Section 1–6.'' This commenter also recommended that OSHA adopt the definition of ''vapor source'' from section 1–6 of NFPA 34–1995. Finally, a third commenter (Ex. 4–7) urged OSHA to ''consider adding 'or hazardous concentrations of vapors' [to the definition] so that this encompasses both [former] regulations.''

OSHA agrees with these commenters that the definition of ''vapor area'' in the final rule should be more specific. Consequently, the Agency revised the definition to include areas in which the concentration of flammable vapors exceeds 25% of the LFL. The revised definition, therefore, is consistent with the phrase ''dangerous quantities'' in the definition of ''vapor area'' in former paragraph 1910.108(a)(2). However, OSHA sees no need to adopt a definition for ''vapor source'' because this term is not used in the regulatory text.

Proposed paragraph 1910.123(a) (final paragraph 1910.124(a)), which addressed the construction requirements for dip tanks and would have required the tank and its drain boards to be able ''to withstand any expected load,'' received only one comment (Ex. 4–7): ''A more concise wording would read 'Dip tanks must be constructed for their intended service.' '' The Agency interprets the phrase ''to withstand any expected load'' in the standard as referring to the strength of the dip tank. The term ''service'' in the commenter's recommended language appears to address the usefulness of a dip tank, not its strength. Therefore, OSHA is not adopting this commenter's suggestion.

Proposed paragraph 1910.123(b) (final paragraph 1910.124(b)), which specified the requirements for adequate ventilation, elicited only the following comment (Ex. 4–4): ''NFPA 34 Section 5–2 is more definitive [than the parallel provision in the proposed rule] in that it sets a performance requirement for the ventilation system to limit the extent of the vapor area to not more than 5 feet beyond the vapor source, as defined in NFPA 34.'' OSHA believes that, for optimal employee protection and consistency with the requirements of former paragraphs 1910.94(d)(3) and 1910.108(b)(1), no area above the dip tank may have a concentration greater than 25% of the lower flammable limit for the substance in the tank. Additionally, paragraph 1910.124(b)(4) of the final standard states, as did the proposal, that the employer who complies with NFPA 34–1995 also meets the mechanical-ventilation requirements of the OSHA standard.

Proposed paragraph 1910.123(b)(2) (final paragraph 1910.124(b)(3)), which concerned tank covers and materials that may be used as alternatives to ventilation in some circumstances, elicited only one comment. This commenter (Ex. 4–4) stated that ''[w]hile a tank cover will reduce ignitable vapors, it can be argued that the floating beads [allowed by the standard to replace or supplement ventilation in some cases] will increase the surface area from which vapors can evolve.'' According to the final rule, however, tank covers or floating materials

(including floating beads) cannot be used when these controls do not ''maintain the airborne concentrations of the hazardous material and the worker's exposure below the limits specified in paragraphs (b)(1) and (b)(2) of this section.'' OSHA, therefore, believes that this commenter's concern has been addressed by this revision to the final rule.

Proposed paragraph 1910.123(b)(3) (final paragraph 1910.124(b)(4)), which contained ventilation specifications, elicited only one comment (Ex. 4–4); this commenter urged OSHA to adopt the ventilation design and installation requirements in NFPA 91. OSHA reviewed the most recent NFPA 91 consensus standard and believes that it is a useful reference for constructing and installing ventilation systems; unlike the references specified in final paragraph 1910.124(b)(4), however, NFPA 91 does not contain the information necessary to determine the volumes and flow rates necessary to remove vapor hazards from the workplace.

Proposed paragraph 1910.123(b)(4) (final paragraph 1910.124(b)(5)), which addressed mechanical ventilation, received only one comment (Ex. 4–7). This commenter stated that this paragraph does not allow employers to use dilution (non-mechanical) ventilation to control low-level exposures to airborne contaminants. This is a misinterpretation of proposed paragraph 1910.123(b)(4), however, because that paragraph does not require that mechanical ventilation be used, only that it ''draw the flow of air into a hood or exhaust duct'' when it *is* used. Therefore, non-mechanical dilution ventilation (e.g., open windows and doors) can be used when it meets the specifications of final paragraphs 1910.124(b)(1) and (b)(2).

Proposed paragraph 1910.123(c)(2)(i) (final paragraph 1910.124(c)(2)(i)), which specified that recirculated exhaust air be free of solid particulates, was the subject of a comment (Ex. 4–7) that stated ''this requirement is unnecessary unless the particulate poses a health or fire hazard.'' OSHA agrees that this requirement applies only to particulates that pose health and fire hazards to employees, and has revised the final provision accordingly.

Proposed paragraph 1910.123(c)(3)(iii), which required that the flow rate of make-up air be measured when an exhaust hood is installed, elicited two comments (Exs. 4–3 and 4–10). The first commenter (Ex. 4–3) endorsed the proposed revision because it would improve compliance, while the second commenter (Ex. 4–10) noted, ''[For small operations, t]here [may be] numerous exhausts and numerous sources of make-up air. In these cases the flow rate of make up air can not be measured.''

OSHA has decided that this provision is redundant with the requirements of final paragraph 1910.124(d)(1), which requires that the correct airflow be evaluated and maintained to ensure that the volume of outside air is at least 90 percent of the volume of the exhaust air. Therefore, the paragraph as proposed is not included in the final rule.

Proposed paragraph 1910.123(d) (final paragraph 1910.124(e)), which addressed employee entry into dip tanks, received only one comment (Ex. 4–7). This commenter asked whether the permit requirements of OSHA's Permit-Required Confined Spaces standard (29 CFR 1910.146) will apply to dip tanks because that standard defines confined-space entry as ''breaking the plane of the confined space with any part of the body.'' This commenter observed that ''[i]n dipping and coating operations employees may be required to break the plane of the tank to dip or coat parts.''

According to paragraph (b) of 29 CFR 1910.146, a permit-required confined space must be ''large enough and so configured that an employee can bodily enter and perform assigned work,'' have ''limited or restricted means for entry or exit,'' and not be ''designed for continuous employee occupancy.'' In response to this commenter, OSHA notes that entry into dip tanks that meet this definition must be done in accordance with the requirements of 29 CFR 1910.146, and that the standard would be cited if improper entry occurs.

Proposed paragraph 1910.123(e) (final paragraph 1910.124(f)), which addressed training requirements for employees who work in or near a vapor area, was found by two commenters (Exs. 4–1 and 4–7) to duplicate other OSHA training requirements. The proposed provision would have required employers to instruct employees working in or near a vapor area in the hazards of their jobs, first-aid products, and PPE. One commenter (Ex. 4–7) stated that ''[t]he requirements of 29 CFR 1910.1200 already require [hazard training]. This [proposed] requirement is duplicative and burdensome. [Also, 29 CFR 1910.38 and 1910.151 specify first-aid procedures.]''

OSHA agrees that the proposed requirement for hazard training would have duplicated the provisions of paragraph (h) of the Hazard Communication standard, 29 CFR 1910.1200, and has therefore deleted it from the final Dipping and Coating Operations standard. However, OSHA does not agree that paragraph (a) of section 1910.38 addresses first aid directly; instead, it requires that designated employees be trained to assist ''in the safe and orderly emergency evacuation of [other] employees.'' Paragraph (c) of section 1910.151 requires that ''a person or persons be trained to render first aid'' when ''an infirmary, clinic, or hospital is not in near proximity * * * for the treatment of all injured employees * * *.'' The first-aid provision of section 1910.151, therefore, does not duplicate the proposed requirement, which stated that ''all employees who work in or near a vapor area must receive ''appropriate first-aid instruction.'' Adopting the first-aid requirements of section 1910.151 in lieu of the proposed requirement would reduce substantially the protection afforded to employees by this paragraph of the final rule, and OSHA has thus not adopted this suggestion.

For clarity, OSHA has revised the language of paragraph 1910.124(f) to state that employees must ''know'' about the first-aid procedures appropriate to the dipping and coating hazards to which they are exposed. This revision eliminates the proposed provision, which would have required employers to document that employees involved in dipping or coating operations had received the required instruction.

Proposed paragraph 1910.123(f), which specified requirements for personal protective equipment (PPE), elicited two comments (Exs. 4–1 and 4–7) recommending that the provision be dropped because it duplicated the hazard-assessment, training, and PPE requirements of 29 CFR subpart I. Two other commenters (Exs. 4–10 and 4–11) noted that a hazard assessment conducted under the proposed provision would require PPE when employees were exposed to minor hazards, such as soap-and-water solutions. A fifth commenter (Ex. 4–13) recommended that the ANSI consensus standard for eye and face protection, ANSI Z87.1–1989, be referenced in this paragraph.

OSHA agrees that this proposed paragraph would have duplicated the requirements of 29 CFR 1910, subpart I, and has accordingly deleted it from the final standard. OSHA notes that the requirements of 29 CFR 1910, subpart I, including the Respiratory Protection requirements at section 1910.134, have always applied, as appropriate, to employers who are involved in dipping or coating operations, and will continue to do so. Paragraph (b)(1) of section 1910.133 (''Eye and Face Protection''),

which applies to employers who engage in dipping or coating operations, refers to ANSI Z87.1–1987; thus, adding a cross-reference to the ANSI standard is not necessary, as suggested by one commenter (Ex. 4–1).

Proposed paragraph 1910.123(g) (final paragraph 1910.124(g)), which addressed hygiene facilities, elicited two comments. The first commenter (Ex. 4–3) stated that proposed paragraph (g)(3), which would have regulated washing facilities, was too vague and recommended that a minimum number of basins be specified. The second commenter (Ex. 4–7), however, found that proposed paragraph (g)(3) was ''well stated'' but that proposed paragraphs (g)(1) and (g)(2), which would have required storage, emergency-shower, and eye-wash facilities, were ''unnecessary and burdensome.''

On review of these provisions (proposed paragraphs (g)(1) and (g)(2)), OSHA has decided to narrow their application to those employees exposed to liquids that ''burn, irritate, or otherwise [are] harmful to the skin.'' This revision is consistent with section 1910.94(d) of the former rule.

To clarify the requirement in proposed paragraph (g)(3) and to ensure that an adequate number of hygiene facilities is provided to employees, OSHA has revised this provision to specify, consistent with former section 1910.94(d)(9)(ix), that ''at least one basin with a hot-water faucet [be provided] for every 10 employees who work with such liquids.''

Proposed paragraph 1910.123(h) (final paragraph 1910.124(h)), which specified physical examination and first-aid requirements, received two comments (Exs. 4–7, 4–10) that were concerned with the regulatory burden imposed by the proposed paragraph. One commenter stated that ''[p]hysical exams may be required dependent on the health risk but certainly [are] not required for cleaning operations using mild surfactants'' (Ex. 4–7). This commenter noted that the medical service and first-aid requirements of section 1910.151 appear to duplicate the provisions of this paragraph, and that many employers ''utilize first aid providers who bring their supplies with them to an emergency.'' The second commenter (Ex. 4–10) believed that the requirement proposed in paragraph (h)(4), which would have required first-aid supplies to be located near dipping and coating operations, contradicted the provision in proposed paragraph (h)(2) for a properly designated person to treat skin abrasions, cuts, rashes, or open sores, stating that ''[t]he presence of first aid supplies near the operation would encourage administration of first aid by the operators [who] are not necessarily the properly designated people.''

OSHA has not adopted the suggestions of these commenters because doing so would reduce the level of employee protection provided by the final rule. For example, even a mild surfactant may worsen a serious skin lesion and cause it to require the attention of a health care provider. Further, requiring that the first-aid kit be located ''near the dipping and coating operations'' could facilitate more rapid intervention in a medical emergency than merely having such supplies ''readily available,'' as required by paragraph (b) of section 1910.151. The Agency notes, however, that paragraph (h)(4) of the final rule specifies only that the first-aid supplies be ''appropriate.'' This means that less hazardous dipping or coating operations would be likely to require fewer first-aid supplies than more hazardous operations. In response to the comments in Ex. 4–10, the Agency finds that final rule paragraphs 1910.124 (h)(2) and (h)(4) do not contradict each other; paragraph (h)(2) addresses the treatment of skin abrasions, cuts, rashes, or open sores to prevent skin exposure to hazardous chemicals, while paragraph (h)(4) designates the location of first-aid supplies to be used after an injurious exposure has occurred.

As noted above in the summary and explanation for final rule paragraph 1910.124(g), the Agency has determined that these requirements apply only when specific liquids are being used. Accordingly, paragraph 1910.124 (h) of the final rule has been revised to require physical examination and first aid only when employees are exposed to ''liquids that may burn, irritate, or otherwise harm their skin[.]''

Proposed paragraph 1910.123(j) (final paragraph 1910.124(j)), addressed the inspection and maintenance of dipping and coating operations, including quarterly inspections of ventilation systems. One commenter (Ex. 4–3) endorsed the proposed language because it would improve compliance, while another commenter (Ex. 4–7) found the requirement ''too prescriptive'' and recommended that it be replaced with more performance-based language. This commenter stated that ''[i]n some corrosive atmospheres[,] quarterly [inspections] would be too infrequent. In other non-corrosive atmospheres[,] quarterly [inspections] would be too frequent and a waste of maintenance resources'' (Ex. 4–7).

The proposed requirement was adapted from paragraph (d)(8)(i) of former section 1910.94, which specified inspections ''[a]t intervals of not more than 3 months operation.'' Consequently, this commenter (Ex. 4–7) is recommending a substantive revision to the standard that is beyond the scope of this rulemaking. OSHA also believes that the final rule's phrase, ''at least quarterly,'' imposes a duty on employers to inspect at more frequent intervals when doing so is necessary ''to ensure that proper rates are maintained.''

Proposed paragraph 1910.124 (final paragraph 1910.125), which specified requirements for dipping and coating operations that use flammable or combustible liquids, elicited only one comment (Ex. 4–4). This commenter encouraged OSHA to reinstate the former rule's requirement for bottom drains, at least for large tanks, and to adopt the language of NFPA 34–1995, section 3–6, because ''draining the tank, particularly a large one, also removes a substantial amount of the fuel from the fire area quickly. Deleting this requirement presents a much greater risk for a severe and long-lived fire.''

OSHA agrees with the commenter that properly installed bottom drains are necessary to quickly remove the substantial quantities of flammable and combustible liquids often present in large dip tanks; such removal reduces the risk of severe and long-lived fires that, under some conditions (e.g., delayed evacuation/exit), could pose serious risks to employees. Accordingly, paragraph 1910.125(c) of the final rule requires bottom drains for large dip tanks. However, unlike paragraph (c)(3) of former section 1910.108 or section 3–6 of the NFPA standard, this paragraph of the final rule uses performance-based language. For example, the final rule requires only that tanks discharge to a safe location, not to ''closed properly vented salvage tanks or to a safe location outside,'' as specified by the former standard. The Agency believes that the term ''safe location'' includes ''closed and vented salvage tanks.'' The former standard and NFPA 34–1995 also specify the pipe sizes that must be used to drain dip tanks of various capacities, while this paragraph of the final rule requires only that the pipes be ''correctly sized'' to remove the flammable liquid. The revised language does specify, however, that the pipes be capable of removing the dip tank's contents ''within five minutes after the fire begins,'' consistent with the language in NFPA 34–1995. This revision thus replaces the table in former paragraph 1910.108(c)(3)(iii) that specified correct pipe size and clarifies the requirement in former paragraph

1910.108(c)(3)(i) that ''bottom drains [be] * * * arranged to quickly drain the tank * * *''

Paragraph 1910.125(c) of the final rule retains the exception from the bottom-drain requirements for dip tanks that contain highly viscous liquids. To clarify the provision, however, OSHA has replaced the phrase ''makes this impractical'' with the language ''does not allow the liquid to flow or be pumped easily.'' Also included in this paragraph of the final rule is the provision in NFPA 34–1995 that excepts dip tanks that have automatic-closing doors from the bottom-drain requirements; former section 1910.108 did not have this exception. OSHA believes that automatic-closing doors eliminate fire and explosion hazards if they meet the requirements of paragraph (f)(3) of final section 1910.125 and, therefore, will protect employees at least as well as bottom drains.

Proposed paragraph 1910.124(b)(5) (final paragraph 1910.125(b)(2)), which addressed the clogging of overflow pipes, elicited only the following comment (Ex. 4–4): ''[The NFPA Committee is] not aware of any problems with firefighting foam clogging the overflow pipe on a dip tank.'' The proposed provision was adopted from a requirement in paragraph (g)(3) of former section 1910.108, and OSHA believes that it is necessary to address the possibility of overflow pipe blockage. Paragraph 1910.125(b)(2) of the final rule thus includes the provision as proposed.

Proposed paragraph 1910.124(d) (final paragraph 1910.125(e)), which required the control of ignition sources, received only one comment (Ex. 4–4). This commenter stated that OSHA should substitute chapter 4 of NFPA 34–1995 for this entire paragraph of the final rule because, in the commenter's opinion, the NFPA chapter provides ''diagrams that greatly simplify interpreting the requirements and establishing the limits of the hazardous (classified) location.'' OSHA finds that by defining the vapor area and the hazardous area surrounding the vapor area in objective terms, paragraph 1910.125(e) of the final rule will provide employers with the information necessary to identify hazardous areas and sources of ignition. Paragraph 1910.125(e) of the final rule also specifies the means of controlling ignition sources. OSHA has therefore not accepted this commenter's suggestion.

Proposed paragraph 1910.124(d)(2) (final paragraph 1910.125(e)(1)(i)), which specified the area that must be free of ignition sources, elicited several comments (Exs. 4–3, 4–7, 4–11). One commenter (Ex. 4–3) generally endorsed the proposed provision. Two commenters, however, recommended that the paragraph be revised. The first of these commenters (Ex. 4–7) stated that the requirement should be performance based and recommended the following language: ''Open flames must be kept out of the vapor area * * * to prevent ignition.'' The second commenter (Ex. 4–11) believed that the proposed paragraph expanded the requirement in former section 1910.108 because it did not define hazardous areas by the quantity of flammable vapors present; this commenter recommended that OSHA instead adopt ''the same distances as described in NFPA 34–1995.''

OSHA believes that keeping ignition sources (including open flames) out of areas that are within 20 feet of the vapor area, which is a requirement taken from paragraphs (e)(1)(i) and (e)(2) of former section 1910.108, will afford employees more protection than merely excluding ''open flames'' from the vapor area (as specified in Ex. 4–7's recommended language). OSHA believes that the revised definition of ''vapor area'' in the final rule, which states that a vapor area is an ''area where the vapor concentration exceeds 25% of the LFL,'' when used in combination with the definition of an ''adjacent area'' as an ''area within 20 feet * * * of a vapor area,'' will make paragraph 1910.125(e) of the final rule consistent with the requirements of former paragraph 1910.108(e)(2) and satisfy these commenters' concerns.

Proposed paragraph 1910.124(d)(6) (final paragraphs 1910.125(e)(4)(ii) and (e)(4)(iii)), which delineated the procedure for disposing of rags and other contaminated material, was found by the single commenter (Ex. 4–3) to be a ''[g]ood change, [because it] removes all confusion.'' The language of the final rule is thus unchanged from that proposed.

Proposed paragraph 1910.124(d)(7) (final paragraph 1910.125(e)(5)), which prohibited smoking in a vapor area, elicited one comment (Ex. 4–13). This commenter recommended that the no-smoking signs required by this paragraph conform to the characteristics for such signs specified in the ANSI Z535.2–1991 consensus standard.

The proposed no-smoking provision was adopted from paragraph (f)(4) of former section 1910.108. The Agency also regulates warning signs in § 1910.145 to ensure that warning signs used in general industry conform with uniform specifications and are readily understood by employees. OSHA believes, therefore, that employer familiarity with the former standard and the provisions of § 1910.145 will enhance their compliance with final paragraph 1910.125(e)(5). Adopting ANSI Z535.2–1991 would require employers to comply with new sign requirements, thereby increasing their regulatory burden. Adopting ANSI Z535.2–1991 would require substantial changes to the former rule and, therefore, is beyond the scope of this plain-language rulemaking. (OSHA also notes that ANSI has since issued an updated version of this consensus standard, ANSI Z535.2–1998. Either version (1991 or 1998) will be acceptable for the design of no-smoking signs to comply with final paragraph 1910.125(e)(5).)

Proposed paragraph 1910.124(e)(1)(i) (final paragraph 1910.125(f)(1)), which prescribed fire protection for dip tanks having a specified volume or surface area, received only one comment (Ex. 4–4). This commenter stated that section 7–6 of NFPA 34–1995 should be substituted for this paragraph because the NFPA standard ''covers the smaller processes and allows a choice between a self-closing cover or a fire suppression system.'' OSHA based the size limitations specified in this requirement on paragraphs (c) and (h) of former section 1910.108; revising this requirement to cover smaller dip tanks would represent a substantive change to the former rule and is beyond the scope of this plain-language rulemaking.

Proposed paragraph 1910.125(d)(5) (final paragraph 1910.126(d)(5)), required that solvent-cleaning and vapor-degreasing tanks ''with a vapor area larger than 4 feet^2 (.38m^2) . . . have cleanout or sludge doors located near the bottom of each tank.'' One commenter (Ex. 4–1) criticized the proposed language for using the term ''vapor area'' in a manner that was inconsistent with the definition of the term in proposed paragraph 1910.122(d). After reviewing the proposed paragraph, OSHA decided to delete it from the final standard because the Agency determined that it served no valid safety and health purpose (see the explanation of this action below in paragraph (j) of Part 4).

Proposed paragraph 1910.125(g)(7) (final paragraph 1910.126(g)(6)), which specified the fences, rails, or guards required in paint-detearing operations, received only a single comment (Ex. 4–13). This commenter recommended that such fences, rails, or guards be installed according to the ANSI A1264.1–1995 consensus standard. The ANSI consensus standard, which is more detailed than the final rule's provision,

would require construction of a complete guardrail system for this purpose. OSHA believes that it is appropriate to permit a single rail when doing so will safely isolate employees from detearing operations. Accordingly, OSHA has not made the suggested change to the final rule.

Part 3

The following discussion addresses general comments on this plain language rulemaking.

One commenter (Ex. 4–4) recommended that ''OSHA abandon its attempt to re-write portions of a 25-year-old standard'' to conform to various parts of NFPA 34–1995 and instead adopt NFPA 34–1995 in its entirety. This commenter also encouraged OSHA to include references in the final rule stating that ''any ventilation system designed, installed, and operated in accordance with NFPA 34 and NFPA 91 meets the requirements of [this rule] for fire protection purposes,'' and ''that any dipping/coating system that meets the requirements of NFPA 34 also meets [the requirements of this rule].'' In a related matter, this commenter and another commenter (Ex. 4–13) asked why this rulemaking did not comply with the National Technology Transfer and Advancement Act of 1996 (NTTAA), which mandates that Federal regulatory agencies ''use technical standards that are developed or adopted by voluntary consensus standards bodies. . . .''

In response, OSHA notes that the NTTAA's requirements do not apply where the Agency determines that use of a consensus standard ''is inconsistent with applicable law or otherwise impractical . . . .'' (15 U.S.C. 272 note.) In the case of this plain-language rewrite, adopting the recommended language would result in substantive revisions to the former standards and would therefore be beyond the scope of this rulemaking. In addition, the recommended NFPA standards use specification language, which is inconsistent with OSHA's emphasis on performance-oriented language in this rulemaking.

Part 4

OSHA has made various technical and editorial corrections to the regulatory text of the final rule.

In this final rule, OSHA has made the following changes to clarify the rule's meaning, to make the rule easier to follow, and to correct errors in the proposed rule. Specifically, OSHA has:

(a) Redesignated the section numbers in the final rule as 29 CFR 1910.122 to 29 CFR 1910.126 instead of 29 CFR 1910.121 to 29 CFR 1910.125. This revision is necessary because OSHA has reserved section 1910.121 for a future rule addressing the accreditation of training programs for workers involved in hazardous-waste operations and emergency-response activities.

(b) Removed proposed paragraph 1910.122(c)(2) from the final rule. The proposed paragraph, which was adopted from former paragraph 1910.94(d)(13)(ii), excepted surface-coating operations covered by 29 CFR 1910.107 from the scope of the standard. OSHA removed this provision from the final standard because the Agency interpreted the phrase ''excluding open-tank operations'' in former paragraph 1910.94(d)(13)(ii) to mean that the exception applied only when surface-coating operations do not involve dip tanks. OSHA believes that it is unnecessary to specify that the final standard, which regulates dip-tank operations, does not apply to surface-coating operations that do not involve dip tanks.

(c) Added two definitions to paragraph 1910.123(d) of the final rule. The first definition, of the term ''adjacent area,'' clarifies the use of this term in paragraphs 1910.125(e)(1)(i) and (e)(1)(ii) of the final rule, and is consistent with the definition of ''adjacent area'' in paragraph (e)(2) of former section 1910.108. In both definitions, an adjacent area is defined as distinct from, and excluding, the vapor area.

The second definition, of the pronoun ''you,'' was added because the final rule uses the ''you'' form of the question-and-answer plain-language style, as recommended in Federal plain-language guidance. This definition makes clear that employers are responsible for implementing the requirements of the final rule, as mandated by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

(d) Removed the proposed definition of ''safe distance'' from the final rule to avoid confusion when the term is used in the context of spark production (see paragraphs 1910.126(g)(3) and (g)(4)(iii) of the final rule), as opposed to its use in the context of the removal of an employee from a fire hazard (see paragraph 1910.125(a)(4) of the final rule). The meaning of the term now is specified separately in paragraphs 1910.126(a)(4), (g)(3), and (g)(4)(iii) of the final rule.

(e) Restored the requirement in former paragraph 1910.94(d)(9)(vii) to limit the water pressure in a water hose used for emergency eye washing and showering to 25 pounds per square inch (1.62 k/cm^2) or less; this limit was inadvertently left out of the proposal. OSHA added this requirement to paragraph 1910.124(g)(2) of the final rule because the pressure limitation is necessary to prevent possible eye injury while using the hose.

(f) Removed from the final rule the first sentence in proposed paragraph 1910.124(j)(1), which required employers to ''inspect [dipping and coating] equipment and promptly correct any deficiencies . . . [.]'' This provision is redundant in large part with the requirement in proposed paragraph 1910.124(j)(1)(ii) ''[T]o inspect all dipping and coating equipment . . . periodically.'' The periodic inspection requirement is specified in paragraph 1910.124(j)(3) of the final rule. The proposed requirement to ''promptly correct any deficiencies'' was added to final paragraph 1910.124(j)(3) because paragraph (f)(3) of former section 1910.108 required employers to promptly correct any defects found during periodic inspections of dip tanks.

(g) Moved an exception from the requirements to control ignition sources was from the note to proposed paragraph 1910.125(a) to paragraph 1910.125(e)(1)(i) of the final rule. OSHA determined that the exception in the former rule (paragraph 1910.108(e)(1)(i)) actually applies to electrostatic paint-detearing operations instead of hardening and tempering tanks. Accordingly, the exception has been moved to paragraph 1910.125(e)(1)(i) of the final rule, which specifies controls for electrical sources of ignition.

(h) Restored, in final rule paragraph 1910.126(a)(5), a provision inadvertently excluded from proposed paragraph 1910.125(a)(5) that permitted bottom drains in hardening or tempering tanks to be combined with the oil-circulating system.

(i) Removed from the final rule the note in proposed paragraph 1910.125(d)(2) because the combustion chamber must be air tight (except for the flue opening) regardless of the solvent used in vapor degreasing tanks.

(j) Removed proposed paragraph 1910.125(d)(5) from the final rule. The proposed paragraph required that solvent-cleaning and vapor-degreasing tanks that have a surface area larger than 4 feet^2 (.38 m^2) be equipped with ''cleanout or sludge doors located near the bottom of the tank.'' OSHA determined that the purpose of this provision, which was adopted from former paragraph 1910.94(d)(12)(iv), was to provide employers with a convenient means of cleaning residue from the bottom of the tanks; therefore,

the provision served no valid safety and health purpose.

Part 5

Comparing provisions of the former rules and the final rule.

The following tables show the paragraph designations of the former rules and the corresponding provisions of the final rule. Table I covers the requirements from former section 1910.94(d), and Table II lists the provisions from former section 1910.108. Table III contains the provisions of final sections 1910.123 through 1910.126 and the sources for each provision in former sections 1910.94(d) and 1910.108.

TABLE I

Former Section 1910.94(d)	Final Sections 1910.123 through 1910.126
(d) Open surface tanks. (1) General (i) Application.	1910.123(a) and (b).
(d)(1)(ii) Exhaust system construction	1910.124(b)(4).
(d)(2)(i) to (d)(2)(vii) Classification of open-surface tank operations	Covered by standards referenced in 1910.124(b)(4).
(d)(3) Ventilation	1910.124(b)(1) and (b)(2).
(d)(4)(i) to (d)(4)(v) Control requirements	Covered by standards referenced in 1910.124(b)(4).
(d)(5) Spray cleaning and degreasing	1910.126(f).
(d)(6) Control means other than ventilation	1910.124(b)(3).
(d)(7)(i) and (d)(7)(ii) System design	1910.124(b)(4).
(d)(7)(iii) Protect against exhaust system fire	1910.124(b)(6).
(d)(7)(iv) Exhaust system meets consensus standards	1910.124(b)(4).
(d)(8) Operation (i) Maintain airflow.	1910.124(j)(1) and (j)(2).
(d)(8)(ii),(iii) Exhaust discharge; makeup air	1910.124(c) and (d).
(d)(9) Personal protection. (i) Training	1910.124(f).
(d)(9)(ii) Protective shoes	Deleted, covered by subpart I of 29 CFR 1910.
(d)(9)(iii) Protective gloves	Deleted, covered by subpart I of 29 CFR 1910.
(d)(9)(iv) Protective garments	Deleted, covered by subpart I of 29 CFR 1910.
(d)(9)(v) Protective goggles	Deleted, covered by subpart I of 29 CFR 1910.
(d)(9)(vi) Respirators	Deleted, covered by subpart I of 29 CFR 1910.
(d)(9)(vii) Emergency showers	1910.124(g)(2).
(d)(9)(viii) Physician authorization, examination	1910.124(h)(1), (h)(2), and (h)(4).
(d)(9)(ix) Washing facilities	1910.124(g)(3).
(d)(9)(x) Locker space	1910.124(g)(1).
(d)(9)(xi) First aid	1910.124(h)(3).
(d)(10) Special precautions for cyanide	1910.126(e).
(d)(11) Inspection, maintenance, and installation. (i) Floors	Covered by section 1910.22(a).
(d)(11)(ii) Tank cleaning	1910.124(i).
(d)(11)(iii) Test tanks before entering	1910.124(e).
(d)(11)(iv) and (d)(11)(v) Entering tank	Covered by section 1910.146.
(d)(11)(vi) Welding operations	1910.124(j)(4) and (j)(5).
(d)(12) Vapor degreasing tanks. (i) Vapor control	1910.126(d)(1).
(d)(12)(ii) Keep gas vapors away from heating units	1910.126(d)(2) and (d)(3).
(d)(12)(iii) Do not create excessive vapors	1910.126(d)(4).
(d)(12)(iv) Solvent-cleaning and vapor-degreasing tanks must have cleanout or sludge doors.	Deleted; unnecessary.
(d)(13) Scope. (i) Coverage	1910.123(a), (b), and (c).
(d)(13)(ii) Molten materials operations defined	1910.123(c).
(d)(13)(iii) Surface coating operations defined	Deleted; unnecessary.

TABLE II

Former section 1910.108	Final sections 1910.123 through 1910.126
(a) Definitions applicable to this section-(1) Dip tank	1910.123(d).
(a)(2) Vapor area	1910.123(d).
(a)(3) Approved	1910.123(d).
(a)(4) Lister	Deleted; unnecessary
(b) Ventilation-(1) Vapor area ventilation	1910.124(b)(1), (b)(3), (b)(4), and (b)(5), and 1910.125(d)(2)
(b)(2) Ventilation combined with drying	1910.125(e)(3).
(c) Construction of dip tanks. (1) General	1910.124(a) and 125(a).
(c)(2) Overflow pipes. (i) Tank capacity	1910.125(b)(1).
(c)(2)(ii) Overflow pipe capacity	1910.125(b)(2)(i).
(c)(2)(iii) and (c)(2)(iv) Overflow pipe cleaning and location	1910.125(b)(2)(ii) and (b)(2)(iii).
(c)(3)(i) to (c)(3)(iii) Bottom drains	1910.125(c).
(c)(4) Salvage tanks	Deleted; property protection.
(c)(5) Automatic extinguishing facilities	1910.125(f)(1) and (f)(3).
(c)(6) Conveyor systems	1910.125(d).
(c)(7) Heating dip tank liquids	1910.125(g).
(d) Liquids used in dip tanks, storage, and handling	1910.125(e)(2).
(e) Electrical and other sources of ignition. (1) Vapor areas. (i) No open flames, explosion proof equipment.	1910.125(e)(1).
(e)(1)(ii) Electrical equipment in vapor areas	1910.125(e)(1)(i).
(e)(2) Adjacent areas	1910.125(e)(1).
(f) Operations and maintenance. (1) General	1910.125(e)(4)(i).
(f)(2) Waste cans	1910.125(e)(4)(ii) and (e)(4) (iii).

TABLE II—Continued

Former section 1910.108	Final sections 1910.123 through 1910.126
(f)(3) Inspection of dip tanks	1910.124(j)(1) and (3).
(f)(4) Warning signs	1910.125(e)(5).
(g) Extinguishment. (1) Extinguishers	1910.125(f)(2)(i).
(g)(2) Automatic water spray extinguishing systems	1910.125(f)(2)(ii).
(g)(3) Automatic foam extinguishing systems	1910.125(b)(2) and 1910.125(f)(2)(ii).
(g)(4) Automatic carbon dioxide systems	1910.125(f)(2)(ii).
(g)(5) Dry chemical extinguishing systems	1910.125(f)(2)(ii).
(g)(6) Dip tank covers. (i) Automatically activated	1910.125(f)(3) and (f)(3)(i).
(g)(6)(ii) to (g)(6)(iv) Construction and use of covers	1910.125(f)(3)(ii) and (f)(3)(iii).
(h) Special dip tank applications. (1) Hardening and tempering tanks. (i) Location	1910.126(a)(1)(i) and (a)(1)(ii).
(h)(1)(ii) Noncombustible hood and vent	1910.126(a)(1)(iii).
(h)(1)(iii) Temperature of cooling medium	1910.126(a)(4).
(h)(1)(iv) High temperature limit switch	1910.126(a)(2) and (a)(3).
(h)(1)(v) Automatic extinguishing facilities	1910.125(f)(1)(ii) and (f)(2)(ii).
(h)(1)(vi) No pressurized air	1910.126(a)(6).
(h)(1)(vii) Bottom drain	1910.125(c)(3), and 1910.126(a)(4) and (a)(5).
(h)(2) Flow coat; general. (i) All preceding standards apply	1910.126 (introductory paragraph).
(h)(2)(ii) Strong and rigid piping	1910.126(b)(2).
(h)(2)(iii) Paint pumped at low pressure	1910.126(b)(1).
(h)(2)(iv) Area of dip tank	Covered by section 1910.123(d) (definition of ''dip tank'').
(h)(3) Electrostatic apparatus	1910.126(g).
(h)(4) Roll coating	1910.126 (introductory paragraph) and 1910.126(c).

TABLE III

Final sections 1910.123 through 1910.126 (final section 1910.122 contains a table of contents for final sections 1910.123 through 1910.126)	Former sections 1910.94(d) and 1910.108 (or applicable NFPA standards)
1910.123 Dipping and coating operations: Coverage and definitions:	
(a) Does this standard apply to me?	
(a)(1) Using a liquid in a dip tank	1910.94(d)(1)(i) and (d)(13)(i).
(a)(2) Draining or drying an object	1910.94(d)(13)(i).
(b) What operations are covered?	1910.94(d)(13)(i).
(c) What operations are not covered? Operations using molten material	1910.94(d)(13)(i) and (d)(13)(ii).
(d)How are terms used in sections 1910.123 through 1910.126 defined?	1910.108(a).
''Adjacent area''	1910.108(e)(2).
''Approved''	1910.108(a)(3).
''Autoignition temperature''	NFPA 325–1994.
''Combustible liquid''	1910.1200(c).
''Dip tank''	1910.108(a)(1).
''Flammable liquid''	1910.1200(c).
''Flashpoint''	1910.1200(c).
''Lower flammable limit (LEL)''	NFPA 325–1994.
''Vapor area''	1910.108(a)(2).
''You''	
1910.124 General requirements for dipping and coating operations:	
(a) What construction requirements apply to dip tanks?	1910.108(c)(1).
(b) What ventilation requirements apply to vapor areas?	
(b)(1) Keep airborne concentrations below 25% of the LFL	1910.94(d)(3) and 1910.108(b)(1)
(b)(2) Meet the levels specified in part 1910, subpart Z.	1910.94(d)(3).
(b)(3) Use of tank covers or floating materials	1910.94(d)(6).
(b)(4) Mechanical ventilation requirements	1910.94(d)(1)(ii), (d)(2), (d)(4), and (d)(7)(i) to (d)(7)(iv); and 1910.108(b)(1).
(b)(5) Airflow requirements for mechanical ventilation	1910.108(b)(1).
(b)(6) Requirements for an independent exhaust system	1910.94(d)(7)(iii).
(c) What requirements must I follow to recirculate exhaust air into the workplace?	
(c)(1) Meet the requirements of paragraph (b) of this section	1910.94(d)(3) and (d)(8)(ii), and NFPA 34–1995.
(c)(2) Other requirements for recirculated exhaust air	NFPA 34–1995.
(c)(3) Requirements for an alarm	NFPA 34–1995.
(d) What must I do when I use an exhaust hood?	
(d)(1) Volume requirements	1910.94(d)(8)(iii).
(d)(2) Prevent damage to exhaust hoods	1910.94(d)(8)(iii).
(e) What requirements must I follow when an employee enters a dip tank?	1910.94(d)(11)(iii) to (d)(11)(v).
(f) What first-aid procedures must my employees know?	1910.94(d)(9)(i).
(g) What hygiene facilities must I provide?	
(g)(1) Storage space	1910.94(d)(9)(x).
(g)(2) Emergency shower and eye-wash station	1910.94(d)(9)(vii).
(g)(3) Washing facilities	1910.94(d)(9)(ix).
(h) What treatment and first aid must I provide?	
(h)(1) For sores, burns, or other skin lesions	1910.94(d)(9)(viii).

TABLE III—Continued

Final sections 1910.123 through 1910.126 (final section 1910.122 contains a table of contents for final sections 1910.123 through 1910.126)	Former sections 1910.94(d) and 1910.108 (or applicable NFPA standards)
(h)(2) For small skin abrasions, cuts, rashes, or open sores	1910.94(d)(9)(viii).
(h)(3) First-aid supplies	1910.94(d)(9)(xi).
(h)(4) Periodic examinations for employees exposed to chromic acid	1910.94(d)(9)(viii).
(i) What must I do before an employee cleans a dip tank?	
(i)(1) Drain the dip tank and open cleanout doors	1910.94(d)(11)(ii).
(i)(2) Ventilate vapor pockets	1910.94(d)(11)(ii).
(j) What must I do to inspect and maintain my dipping or coating operation?	
(j)(1) Inspect ventilation hoods and ductwork	1910.94(d)(8)(i) and 1910.108(f)(3).
(j)(2) Ensure an adequate airflow	1910.94(d)(8)(i).
(j)(3) Periodically inspect dipping and coating equipment	1910.108(f)(3).
(j)(4) Protect employees from toxic exposures during welding, burning, or open-flame work.	1910.94(d)(11)(vi).
(j)(5) Remove solvents and vapors before welding, burning, or open-flame work.	1910.94(d)(11)(vi).
1910.125 Additional requirements for dipping and coating operations that use flammable or combustible liquids:	
(a) What type of construction material must be used in making my dip tank?	1910.108(c)(1).
(b) When must I provide overflow piping?	
(b)(1) When overflow pipes are required	1910.108(c)(2)(i).
(b)(2) Overflow pipe requirements	1910.108(c)(2)(ii), (c)(2)(iii), and (c)(2)(iv).
(c) When must I provide a bottom drain?	
(c)(1) For dip tanks over 500 gallons (1893 L), with specified exceptions	1910.108(c)(3)(i); NFPA 34.
(c)(2) Bottom drain requirements	1910.108(c)(3)(ii); NFPA 34.
(c)(3) Manual and automatic operation	1910.108(c)(3)(i).
(c)(4) Use of automatic pumps	1910.108(c)(3)(i).
(d) When must my conveyor systems shut down automatically?	
(d)(1) When there is a fire	1910.108(c)(6).
(d)(2) When the ventilation rate drops	1910.108(b)(1) and (c)(6).
(e) What ignition and fuel sources must be controlled?	
(e)(1) Ignition sources in the vapor area and any adjacent area	1910.108(e)(1) and (e)(2).
(e)(2) Electrical bonding and grounding of portable containers	1910.108(d).
(e)(3) Ignition from a heating system	1910.108(b)(2).
(e)(4) Ignition from combustible debris and stock, rags and other contaminated material, and the content of waste cans.	1910.108(f)(1) and (f)(2).
(e)(5) Prohibit smoking in a vapor area	1910.108(f)(4).
(f) What fire protection must I provide?	
(f)(1) Tanks covered by these requirements	1910.108(c)(5) and (h)(1)(v).
(f)(2) Types of fire-extinguishing equipment required (manual and automatic)	1910.108(c)(5) and (g)(1) to (g)(5).
(f)(3) Requirements for fire-extinguishing covers	1910.108(g)(6).
(g) To what temperature may I heat a liquid in a dip tank?	
(g)(1) Below the liquid's boiling point	NFPA 34–1995.
(g)(2) At least 100° F (37.8° C) below the liquid's autoignition temperature	NFPA 34–1995.
1910.126 Additional requirements for special dipping and coating operations:	
(a) What additional requirements apply to hardening or tempering tanks?	
(a)(1) Location, flooring, and venting requirements	1910.108(h)(1)(i) and (h)(1)(ii).
(a)(2) Alarm requirements	1910.108(h)(1)(iv).
(a)(3) Limit switch to shut down the conveyor	1910.108(h)(1)(iv).
(a)(4) Circulating cooling system	1910.108(h)(1)(iii).
(a)(5) Bottom drains combined with oil-circulating system	1910.108(h)(1)(vii).
(a)(6) Prohibit use of pressurized air to fill or agitate	1910.108(h)(1)(vi).
(b) What additional requirements apply to flow coating?	
(b)(1) Use of direct low-pressure pumping systems or gravity tanks to supply paint.	1910.108(h)(2)(iii).
(b)(2) Piping requirements	1910.108(h)(2)(ii).
(c) What additional requirements apply to roll coating, roll spreading, or roll impregnating?	
(c)(1) Requirements for bonding and grounding metallic parts and installing static collectors.	1910.108(h)(4)(ii).
(c)(2) Requirement to maintain a conductive atmosphere	1910.108(h)(4)(ii).
(d) What additional requirements apply to vapor degreasing tanks?	
(d)(1) Maintain the vapor level below the top of the tank	1910.94(d)(12)(i).
(d)(2) Prevent solvent fumes from entering the air-fuel mixture	1910.94(d)(12)(ii).
(d)(3) Requirements for flues and draft diverters	1910.94(d)(12)(ii).
(d)(4) Temperature limit for the heating element	1910.94(d)(12)(iii).
(e) What additional requirements apply to cyanide tanks?	1910.94(d)(10).
(f) What additional requirements apply to spray cleaning tanks and degreasing tanks?	
(f)(1) Enclose spray operations	1910.94(d)(5).
(f)(2) Mechanical ventilation required	1910.94(d)(5).
(g) What additional requirements apply to electrostatic paint detearing?	
(g)(1) Approved electrostatic equipment including electrodes	1910.108(h)(3)(ii), (h)(3)(iv), and (h)(3)(xi).

TABLE III—Continued

Final sections 1910.123 through 1910.126 (final section 1910.122 contains a table of contents for final sections 1910.123 through 1910.126)	Former sections 1910.94(d) and 1910.108 (or applicable NFPA standards)
(g)(2) Use of conveyors to support goods being paint-deteared	1910.108(h)(3)(vii).
(g)(3) No manual handling of goods being paint-deteared	1910.108(h)(3)(viii).
(g)(4) Requirement to maintain the safe distance	1910.108(h)(3)(vi).
(g)(5) Automatic controls required	1910.108(h)(3)(ix).
(g)(6) Fences, rails, or guards required	1910.108(h)(3)(x).
(g)(7) Requirements for fire protection	1910.108(h)(3)(xiii).
(g)(8) Collecting paint deposits	1910.108(h)(3)(xiv).

IV. Legal Considerations

Because the final rule is only a plain language redrafting of two former Agency rules, it is not necessary to determine significant risk or the extent to which the final rule reduces that risk. In *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980), the Supreme Court ruled that, before OSHA can increase the protection afforded by a standard, the Agency must find that the hazard being regulated poses a significant risk to employees and that a new, more protective, standard is ''reasonably necessary and appropriate'' to reduce that risk. The final rule that replaces the Agency's former rules regulating dipping and coating operations does not directly increase or decrease the protection afforded to employees, nor does it increase employers' compliance burdens. Therefore, no finding of significant risk is necessary.

The Agency believes, however, that improved employee protection is likely to result from implementation of the final rule because employers and employees who clearly understand what a rule requires are more likely to comply with that rule. In addition, because the final rule is more performance-oriented than the former rules regulating dipping and coating operations, employers will find it easier to comply with the final rule.

V. Economic Analysis

The final rule is not a significant rule under Executive Order 12866 or a major rule under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) because it imposes no additional costs on any private or public sector entity and does not meet any of the other criteria for a significant or major rule specified by the Executive Order or the other statutes. Because the final rule does not impose any additional costs on employers whose operations involve dipping and coating, no economic or regulatory flexibility analysis of the final rule is required.

VI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq (as amended), OSHA has examined the regulatory requirements of the final rule to determine if it will have a significant economic impact on a substantial number of small entities. As indicated in section V of this preamble, the final rule does not increase employers' compliance costs, and may even reduce the regulatory burden on all affected employers, both large and small. Accordingly, the Agency certifies that the final rule does not have a significant economic impact on a substantial number of small entities.

VII. Environmental Impact Assessment

OSHA has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 3et seq.), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). As noted earlier in this preamble, the final rule imposes the same requirements on employers as the standards it replaces; consequently, the final rule has no additional impact on the environment, including no impact on the release of materials that contaminate natural resources or the environment, beyond the impact imposed by OSHA's former standards regulating dipping and coating operations.

VIII. Paperwork Reduction Act

This final rule contains a collection of information requirement. Under 1910.126(g)(4), employers are required to determine how far away employees should remain when electrostatic paint detearing equipment is being used. This distance is called the ''safe distance.'' The employer must conspicuously display this ''safe distance'' on a sign located near the equipment. OSHA does not believe that the provision imposes a burden on the employer to collect or display the information because OSHA believes the information has already been determined and displayed on the few, about 12, pieces of equipment in use today. Newer technology appears to have eliminated the need to manufacture or use electrostatic paint detearing equipment. OSHA solicited public comments on this information collection requirement. There were no comments submitted in response to the collection of information associated with this provision.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OSHA requested OMB approval of the collection of information requirement described above. On June 1, 1998, the Office of Management and Budget (OMB) granted approval of the information requirement under OMB Control Number 1218–0237. The approval expires on June 30, 2001.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

IX. Unfunded Mandates

OSHA has reviewed the final rule in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, and Executive Order 12875. As discussed above in section IV of this preamble (''Legal Considerations''), OSHA has determined that the final rule imposes no new regulatory burdens on any employer, either public or private. The scope and content of the final rule remain the same as those of the former standards regulating dipping and coating operations and have not been expanded to include additional employers. Consequently, compliance with the final rule requires no additional expenditures by either public or private employers. In sum, the final rule does not mandate that State, local, and tribal governments adopt new, unfunded regulatory obligations.

X. Federalism

The final rule which revises the former standards regulating dipping and coating operations has been reviewed for Federalism issues, and the Agency

certifies that the final rule has been assessed in accordance with the principles, criteria, and requirements set forth in Sections 2 through 5 of Executive Order 12612.

Executive Order 12612 requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order provides for preemption of State law only when Congress has expressed an intent that a Federal agency do so. Any such preemption must be limited to the extent possible.

With respect to States that do not have occupational safety and health plans approved by OSHA under Section 18 of the Occupational Safety and Health Act of 1970 (the ''Act'') (29 U.S.C. 667), OSHA finds that the final rule conforms to the preemption provisions of the Act. Under these provisions, OSHA is authorized to preempt State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the State has an OSHA-approved State occupational safety and health plan. (See *Gade* v. *National Solid Wastes Management Association,* 112 S.Ct. 2374 (1992).) States without such programs are, by 29 U.S.C. 667, prohibited from issuing citations for violations of requirements covered by OSHA standards. The final rule does not expand this limitation.

Regarding States that have OSHA-approved occupational safety and health plans (''State-plan states''), OSHA finds that the final rule complies with Executive Order 12612 because the final rule addresses a problem that is national in scope, and Section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) requires State-plan States to adopt OSHA's final rule, or develop an alternative rule that is at least as effective as OSHA's final rule. Having already adopted OSHA's former standards regulating dipping and coating operations (or having developed alternative standards acceptable to OSHA), State-plan States are not obligated to adopt the final rule; they may, however, choose to adopt the final rule, and OSHA encourages them to do so.

XI. State Plan States

OSHA encourages the 25 States and Territories with their own OSHA-approved occupational safety and health plans to revise their standards regulating dipping and coating operations according to the final rule that resulted from this rulemaking. These States are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

XII. List of Subjects in 29 CFR Part 1910

Coating; Combustible liquid; Dipping; Dip tanks; Fire protection; Flammable liquid; Incorporation by reference; Occupational safety and health; Ventilation.

XIII. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. The final rule is issued under the authority of Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No 6–96 (62 FR 111); and 29 CFR part 1911.

Signed at Washington, D.C., this 15th day of March, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

OSHA amends 29 CFR part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General

1. The Authority citation for subpart A of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

Sections 1910.6, 1910.7, and 1910.8 also issued under 29 CFR part 1911.

§ 1910.6 [Amended]

1. Paragraph (b)(1) of § 1910.6 is revised to read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(b) * * *

(1) ''Industrial Ventilation: A Manual of Recommended Practice'' (22nd ed., 1995), incorporation by reference (IBR) approved for § 1910.124(b)(4)(iii).

* * * * *

2. Paragraph (e)(50) of § 1910.6 is revised to read as follows:

* * * * *

(e) * * *

(50) ANSI Z9.1–71 Practices for Ventilation and Operation of Open-Surface Tanks, IBR approved for § 1910.124(b)(4)(iv).

* * * * *

3. Paragraphs (e)(51) through (e)(70) of § 1910.6 are redesignated as paragraphs (e)(53) through (e)(72), respectively, and new paragraphs (e)(51) and (e)(52) are added to read as follows:

* * * * *

(e) * * *

(51) ANSI Z9.2–60 Fundamentals Governing the Design and Operation of Local Exhaust Systems, IBR approved for §§ 1910.94(a)(4)(i) introductory text, (a)(6) introductory text, (b)(3)(ix), (b)(4)(i) and (ii), (c)(3)(i) introductory text, (c)(5)(iii)(b), and (c)(7)(iv)(a); 1910.261(a)(3)(xx), (g)(1)(i) and (iii), and (h)(2)(ii).

(52) ANSI Z9.2–79 Fundamentals Governing the Design and Operation of Local Exhaust Systems, IBR approved for § 1910.124(b)(4)(i).

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4. Paragraph (q) introductory text of § 1910.6 is revised to read as follows:

* * * * *

(q) The following material is available for purchase from the National Fire Protection Association (NFPA), 11 Tracy Drive, Avon, MA 02322:

5. Paragraph (q)(4) of § 1910.6 is revised to read as follows:

* * * * *

(q) * * *

(4) NFPA 34–1966 Standard for Dip Tanks Containing Flammable or Combustible Liquids, IBR approved for § 1910.124(b)(4)(iv).

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6. Paragraphs (q)(5) through (q)(32) of § 1910.6 are redesignated as paragraphs (q)(6) through (q)(33), respectively, and a new paragraph (q)(5) is added to read as follows:

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(q) * * *

(5) NFPA 34–1995 Standard for Dip Tanks Containing Flammable or Combustible Liquids, IBR approved for § 1910.124(b)(4)(ii).

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Subpart G—Occupational Health and Environmental Control

1. The Authority citation for subpart G of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

§ 1910.94 [Amended]

2. Paragraph (d) of § 1910.94 is removed.

Subpart H—Hazardous Materials

1. The Authority citation for subpart H of 29 CFR part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; and 29 CFR part 11.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Section 304, Clean Air Act Amendments of 1990 (Pub.L. 101–549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under Section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 Note), and 5 U.S.C. 553.

§ 1910.108 [Reserved]

2. Section 1910.108 is removed and reserved.

§ 1910.121 [Reserved]

3. Section 1910.121 is added and reserved.

4. New §§ 1910.122 through 1910.126 are added to read as follows:

DIPPING AND COATING OPERATIONS

§ 1910.122 Table of contents.

This section lists the paragraph headings contained in §§ 1910.123 through 1910.126.

§ 1910.123 Dipping and coating operations: Coverage and definitions.

(a) Does this rule apply to me?
(b) What operations are covered?
(c) What operations are not covered?
(d) How are terms used in §§ 1910.123 through 1910.126 defined?

§ 1910.124 General requirements for dipping and coating operations.

(a) What construction requirements apply to dip tanks?
(b) What ventilation requirements apply to vapor areas?
(c) What requirements must I follow to recirculate exhaust air into the workplace?
(d) What must I do when I use an exhaust hood?
(e) What requirements must I follow when an employee enters a dip tank?
(f) What first-aid procedures must my employees know?
(g) What hygiene facilities must I provide?
(h) What treatment and first aid must I provide?
(i) What must I do before an employee cleans a dip tank?
(j) What must I do to inspect and maintain my dipping or coating operation?

§ 1910.125 Additional requirements for dipping and coating operations that use flammable or combustible liquids.

(a) What type of construction material must be used in making my dip tank?
(b) When must I provide overflow piping?
(c) When must I provide a bottom drain?
(d) When must my conveyer system shut down automatically?
(e) What ignition and fuel sources must be controlled?
(f) What fire protection must I provide?
(g) To what temperature may I heat a liquid in a dip tank?

§ 1910.126 Additional requirements for special dipping and coating applications.

(a) What additional requirements apply to hardening or tempering tanks?
(b) What additional requirements apply to flow coating?
(c) What additional requirements apply to roll coating, roll spreading, or roll impregnating?
(d) What additional requirements apply to vapor degreasing tanks?
(e) What additional requirements apply to cyanide tanks?
(f) What additional requirements apply to spray cleaning tanks and spray degreasing tanks?
(g) What additional requirements apply to electrostatic paint detearing?

§ 1910.123 Dipping and coating operations: Coverage and definitions.

(a) Does this rule apply to me? (1) This rule (§§ 1910.123 through 1910.126) applies when you use a dip tank containing a liquid other than water. It applies when you use the liquid in the tank or its vapor to:

(i) Clean an object;
(ii) Coat an object;
(iii) Alter the surface of an object; or
(iv) Change the character of an object.

(2) This rule also applies to the draining or drying of an object you have dipped or coated.

(b) What operations are covered? Examples of covered operations are paint dipping, electroplating, pickling, quenching, tanning, degreasing, stripping, cleaning, roll coating, flow coating, and curtain coating.

(c) What operations are not covered? You are not covered by this rule if your dip-tank operation only uses a molten material (a molten metal, alloy, or salt, for example).

(d) How are terms used in §§ 1910.123 through 1910.126 defined?

Adjacent area means any area within 20 feet (6.1 m) of a vapor area that is not separated from the vapor area by tight partitions.

Approved means that the equipment so designated is listed or approved by a nationally recognized testing laboratory, as defined by § 1910.7.

Autoignition temperature means the minimum temperature required to cause self-sustained combustion, independent of any other source of heat.

Combustible liquid means a liquid having a flash point of 100° F (37.8° C) or above.

Dip tank means a container holding a liquid other than water and that is used for dipping or coating. An object may be immersed (or partially immersed) in a dip tank or it may be suspended in a vapor coming from the tank.

Flammable liquid means a liquid having a flashpoint below 100° F (37.8° C).

Flashpoint means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite if tested in accordance with the definition of ''flashpoint'' in § 1910.1200(c).

Lower flammable limit (LFL) means the lowest concentration of a material that will propagate a flame. The LFL is usually expressed as a percent by volume of the material in air (or other oxidant).

Vapor area means any space containing a dip tank, including its drain boards, associated drying or conveying equipment, and any surrounding area where the vapor concentration exceeds 25% of the LFL of the liquid in the tank.

You means the employer, as defined by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

§ 1910.124 General requirements for dipping and coating operations.

(a) What construction requirements apply to dip tanks? Any container that you use as a dip tank must be strong enough to withstand any expected load.

(b) What ventilation requirements apply to vapor areas? (1) The ventilation that you provide to a vapor area must keep the airborne concentration of any substance below 25% of its LFL.

(2) When a liquid in a dip tank creates an exposure hazard covered by a standard listed in subpart Z of this part, you must control worker exposure as required by that standard.

(3) You may use a tank cover or material that floats on the surface of the liquid in a dip tank to replace or supplement ventilation. The method or combination of methods you choose must maintain the airborne

concentration of the hazardous material and the worker's exposure within the limits specified in paragraphs (b)(1) and (b)(2) of this section.

(4) When you use mechanical ventilation, it must conform to the following standards that are incorporated by reference as specified in § 1910.6:

(i) ANSI Z9.2–1979, Fundamentals Governing the Design and Operation of Local Exhaust Systems;

(ii) NFPA 34–1995, Standard for Dip Tanks Containing Flammable or Combustible Liquids;

(iii) ACGIH's ''Industrial Ventilation: A Manual of Recommended Practice'' (22nd ed., 1995); or

(iv) ANSI Z9.1–1971, Practices for Ventilation and Operation of Open-Surface Tanks, and NFPA 34–1966, Standard for Dip Tanks Containing Flammable or Combustible Liquids.

(5) When you use mechanical ventilation, it must draw the flow of air into a hood or exhaust duct.

(6) When you use mechanical ventilation, each dip tank must have an independent exhaust system unless the combination of substances being removed will not cause a:

(i) Fire;

(ii) Explosion; or

(iii) Chemical reaction.

(c) What requirements must I follow to recirculate exhaust air into the workplace? (1) You may not recirculate exhaust air when any substance in that air poses a health hazard to employees or exceeds 25% of its LFL.

(2) You must ensure that any exhaust air recirculated from a dipping or coating operation using flammable or combustible liquids is:

(i) Free of any solid particulate that poses a health or safety hazard for employees; and

(ii) Monitored by approved equipment.

(3) You must have a system that sounds an alarm and automatically shuts down the operation when the vapor concentration for any substance in the exhaust airstream exceeds 25% of its LFL.

(d) What must I do when I use an exhaust hood? You must:

(1) Provide each room having exhaust hoods with a volume of outside air that is at least 90 percent of the volume of the exhaust air; and

(2) Ensure that the outside air supply does not damage exhaust hoods.

(e) What requirements must I follow when an employee enters a dip tank? When an employee enters a dip tank, you must meet the entry requirements of § 1910.146, OSHA's standard for Permit-Required Confined Spaces, as applicable.

(f) What first-aid procedures must my employees know? Your employees must know the first-aid procedures that are appropriate to the dipping or coating hazards to which they are exposed.

(g) What hygiene facilities must I provide? When your employees work with liquids that may burn, irritate, or otherwise harm their skin, you must provide:

(1) Locker space or other storage space to prevent contamination of the employee's street clothes;

(2) An emergency shower and eye-wash station close to the dipping or coating operation. In place of this equipment, you may use a water hose that is at least 4 feet (1.22 m) long and at least ¾ of an inch (18 mm) thick with a quick-opening valve and carrying a pressure of 25 pounds per square inch (1.62 k/cm^2) or less; and

(3) At least one basin with a hot-water faucet for every 10 employees who work with such liquids. (See paragraph (d) of § 1910.141.)

(h) What treatment and first aid must I provide? When your employees work with liquids that may burn, irritate, or otherwise harm their skin, you must provide:

(1) A physician's approval before an employee with a sore, burn, or other skin lesion that requires medical treatment works in a vapor area;

(2) Treatment by a properly designated person of any small skin abrasion, cut, rash, or open sore;

(3) Appropriate first-aid supplies that are located near the dipping or coating operation; and

(4) For employees who work with chromic acid, periodic examinations of their exposed body parts, especially their nostrils.

(i) What must I do before an employee cleans a dip tank? Before permitting an employee to clean the interior of a dip tank, you must:

(1) Drain the contents of the tank and open the cleanout doors; and

(2) Ventilate and clear any pockets where hazardous vapors may have accumulated.

(j) What must I do to inspect and maintain my dipping or coating operation? You must:

(1) Inspect the hoods and ductwork of the ventilation system for corrosion or damage:

(i) At least quarterly during operation; and

(ii) Prior to operation after a prolonged shutdown.

(2) Ensure that the airflow is adequate:

(i) At least quarterly during operation; and (

ii) Prior to operation after a prolonged shutdown.

(3) Periodically inspect all dipping and coating equipment, including covers, drains, overflow piping, and electrical and fire-extinguishing systems, and promptly correct any deficiencies;

(4) Provide mechanical ventilation or respirators (selected and used as specified in § 1910.134, OSHA's Respiratory Protection standard) to protect employees in the vapor area from exposure to toxic substances released during welding, burning, or open-flame work; and

(5) Have dip tanks thoroughly cleaned of solvents and vapors before permitting welding, burning, or open-flame work on them.

§ 1910.125 Additional requirements for dipping and coating operations that use flammable or combustible liquids.

If you use flammable or combustible liquids, you must comply with the requirements of this section as well as the requirements of sections 1910.123, 1910.124, and 1910.126, as applicable.

You must comply with this section if:	And:
• The flashpoint of the flammable or combustible liquid is 200° F (93.3° C) or above ...	• The liquid is heated as part of the operation; or • A heated object is placed in the liquid.

(a) What type of construction material must be used in making my dip tank? Your dip tank must be made of noncombustible material.

(b) When must I provide overflow piping? (1) You must provide properly trapped overflow piping that discharges to a safe location for any dip tank having:

(i) A capacity greater than 150 gallons (568 L); or

(ii) A liquid surface area greater than 10 feet^2 (0.95 m^2).

(2) You must also ensure that:

(i) Any overflow piping is at least 3 inches (7.6 cm) in diameter and has sufficient capacity to prevent the dip tank from overflowing;

(ii) Piping connections on drains and overflow pipes allow ready access to the interior of the pipe for inspection and cleaning; and

(iii) The bottom of the overflow connection is at least 6 inches (15.2 cm) below the top of the dip tank.

(c) When must I provide a bottom drain? (1) You must provide a bottom drain for dip tanks that contain more than 500 gallons (1893 L) of liquid, unless:

(i) The dip tank is equipped with an automatic closing cover meeting the requirements of paragraph (f)(3) of this section; or

(ii) The viscosity of the liquid at normal atmospheric temperature does not allow the liquid to flow or be pumped easily.

(2) You must ensure that the bottom drain required by this section:

(i) Will empty the dip tank during a fire;

(ii) Is properly trapped;

(iii) Has pipes that permit the dip tank's contents to be removed within five minutes after a fire begins; and

(iv) Discharges to a safe location.

(3) Any bottom drain you provide must be capable of manual and automatic operation, and manual operation must be from a safe and accessible location.

(4) You must ensure that automatic pumps are used when gravity flow from the bottom drain is impractical.

(d) When must my conveyor system shut down automatically? If your conveyor system is used with a dip tank, the system must shut down automatically:

(1) If there is a fire; or

(2) If the ventilation rate drops below what is required by paragraph (b) of § 1910.124.

(e) What ignition and fuel sources must be controlled? (1) In each vapor area and any adjacent area, you must ensure that:

(i) All electrical wiring and equipment conform to the applicable hazardous (classified)-area requirements of subpart S of this part (except as specifically permitted in paragraph (g) of § 1910.126); and

(ii) There are no flames, spark-producing devices, or other surfaces that are hot enough to ignite vapors.

(2) You must ensure that any portable container used to add liquid to the tank is electrically bonded to the dip tank and positively grounded to prevent static electrical sparks or arcs.

(3) You must ensure that a heating system that is used in a drying operation and could cause ignition:

(i) Is installed in accordance with NFPA 86A–1969, Standard for Ovens and Furnaces (which is incorporated by reference in § 1910.6 of this part);

(ii) Has adequate mechanical ventilation that operates before and during the drying operation; and

(iii) Shuts down automatically if any ventilating fan fails to maintain adequate ventilation.

(4) You also must ensure that:

(i) All vapor areas are free of combustible debris and as free as practicable of combustible stock;

(ii) Rags and other material contaminated with liquids from dipping or coating operations are placed in approved waste cans immediately after use; and

(iii) Waste can contents are properly disposed of at the end of each shift.

(5) You must prohibit smoking in a vapor area and must post a readily visible ''No Smoking'' sign near each dip tank.

(f) What fire protection must I provide? (1) You must provide the fire protection required by this paragraph (f) for:

(i) Any dip tank having a capacity of at least 150 gallons (568 L) or a liquid surface area of at least 4 feet^2 (0.38 m^1); and

(ii) Any hardening or tempering tank having a capacity of at least 500 gallons (1893 L) or a liquid surface area of at least 25 feet^2 (2.37 m^2).

(2) For every vapor area, you must provide:

(i) Manual fire extinguishers that are suitable for flammable and combustible liquid fires and that conform to the requirements of § 1910.157; and

(ii) An automatic fire-extinguishing system that conforms to the requirements of subpart L of this part.

(3) You may substitute a cover that is closed by an approved automatic device for the automatic fire-extinguishing system if the cover:

(i) Can also be activated manually;

(ii) Is noncombustible or tin-clad, with the enclosing metal applied with locked joints; and

(iii) Is kept closed when the dip tank is not in use.

(g) To what temperature may I heat a liquid in a dip tank? You must maintain the temperature of the liquid in a dip tank:

(1) Below the liquid's boiling point; and

(2) At least 100° F (37.8° C) below the liquid's autoignition temperature.

§ 1910.126 Additional requirements for special dipping and coating operations.

In addition to the requirements in §§ 1910.123 through 1910.125, you must comply with any requirement in this section that applies to your operation.

(a) What additional requirements apply to hardening or tempering tanks?

(1) You must ensure that hardening or tempering tanks:

(i) Are located as far as practicable from furnaces;

(ii) Are on noncombustible flooring; and

(iii) Have noncombustible hoods and vents (or equivalent devices) for venting to the outside. For this purpose, vent ducts must be treated as flues and kept away from combustible materials, particularly roofs.

(2) You must equip each tank with an alarm that will sound if the temperature of the liquid comes within 50° F (10° C) of its flashpoint (the alarm set point).

(3) When practicable, you must also provide each tank with a limit switch to shut down the conveyor supplying work to the tank.

(4) If the temperature of the liquid can exceed the alarm set point, you must equip the tank with a circulating cooling system.

(5) If the tank has a bottom drain, the bottom drain may be combined with the oil-circulating system.

(6) You must not use air under pressure when you fill the dip tank or agitate the liquid in the dip tank.

(b) What additional requirements apply to flow coating? (1) You must use a direct low-pressure pumping system or a 10-gallon (38 L) or smaller gravity tank to supply the paint for flow coating. In case of fire, an approved heat-actuated device must shut down the pumping system.

(2) You must ensure that the piping is substantial and rigidly supported.

(c) What additional requirements apply to roll coating, roll spreading, or roll impregnating?

When these operations use a flammable or combustible liquid that has a flashpoint below 140° F (60° C), you must prevent sparking of static electricity by:

(1) Bonding and grounding all metallic parts (including rotating parts) and installing static collectors; or

(2) Maintaining a conductive atmosphere (for example, one with a high relative humidity) in the vapor area.

(d) What additional requirements apply to vapor degreasing tanks? (1) You must ensure that the condenser or vapor-level thermostat keeps the vapor level at least 36 inches (91 cm) or one-half the tank width, whichever is less,

below the top of the vapor degreasing tank.

(2) When you use gas as a fuel to heat the tank liquid, you must prevent solvent vapors from entering the air-fuel mixture. To do this, you must make the combustion chamber airtight (except for the flue opening).

(3) The flue must be made of corrosion-resistant material, and it must extend to the outside. You must install a draft diverter if mechanical exhaust is used on the flue.

(4) You must not allow the temperature of the heating element to cause a solvent or mixture to decompose or to generate an excessive amount of vapor.

(e) What additional requirements apply to cyanide tanks? You must ensure that cyanide tanks have a dike or other safeguard to prevent cyanide from mixing with an acid if a dip tank fails.

(f) What additional requirements apply to spray cleaning tanks and spray degreasing tanks? If you spray a liquid in the air over an open-surface cleaning or degreasing tank, you must control the spraying to the extent feasible by:

(1) Enclosing the spraying operation; and

(2) Using mechanical ventilation to provide enough inward air velocity to prevent the spray from leaving the vapor area.

(g) What additional requirements apply to electrostatic paint detearing? (1) You must use only approved electrostatic equipment in paint-detearing operations. Electrodes in such equipment must be substantial, rigidly supported, permanently located, and effectively insulated from ground by nonporous, noncombustible, clean, dry insulators.

(2) You must use conveyors to support any goods being paint deteared.

(3) You must ensure that goods being electrostatically deteared are not manually handled.

(4) Between goods being electrostatically deteared and the electrodes or conductors of the electrostatic equipment, you must maintain a minimum distance of twice the sparking distance. This minimum distance must be displayed conspicuously on a sign located near the equipment.

(5) You must ensure that the electrostatic equipment has automatic controls that immediately disconnect the power supply to the high-voltage transformer and signal the operator if:

(i) Ventilation or the conveyors fail to operate;

(ii) A ground (or imminent ground) occurs anywhere in the high-voltage system; or

(iii) Goods being electrostatically deteared come within twice the sparking distance of the electrodes or conductors of the equipment.

(6) You must use fences, rails, or guards, made of conducting material and adequately grounded, to separate paint-detearing operations from storage areas and from personnel.

(7) To protect paint-detearing operations from fire, you must have in place:

(i) Automatic sprinklers; or

(ii) An automatic fire-extinguishing system conforming to the requirements of subpart L of this part.

(8) To collect paint deposits, you must:

(i) Provide drip plates and screens; and

(ii) Clean these plates and screens in a safe location.

[FR Doc. 99–6824 Filed 3–22–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA48

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Prime Enrollment Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule modifies the TRICARE Prime enrollment procedures for active duty families by specifying that enrollment will be automatically renewed upon the expiration of the annual enrollment period, unless the renewal is declined. It also allows for monthly installment payments of enrollment fees via allotment or electronic funds transfer for those beneficiaries required to pay an annual TRICARE Prime enrollment fee.

EFFECTIVE DATE: April 22, 1999.

ADDRESSES: TRICARE Management Activity, Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–1745.

SUPPLEMENTARY INFORMATION:

Introduction and Background

A. Congressional Action

This final rule implements section 712 of the FY 1999 National Defense Authorization Act, which modified 10 U.S.C. 1097a to provide for automatic renewal of TRICARE Prime enrollments and additional payment options for retirees.

B. Public Comments

The proposed rule was published in the **Federal Register** on July 7, 1998 (63 FR 36651). We received no public comments.

II. Provisions of the Rule

1. TRICARE Prime Enrollment Renewals (revision to section 199.17(o)(2))

Provisions of the Proposed Rule

This paragraph explained that we proposed a change to the TRICARE Prime enrollment period from a 12-month enrollment period to continuous enrollment until such time as the enrollee opted to disenroll from TRICARE Prime. TRICARE Prime was originally designed so that enrollees would be required to take positive action to continue their enrollment in TRICARE Prime at or before their 12-month anniversary date. Positive action to reenroll was required because TRICARE implementation was not available in all regions of the country and overseas locations. Subsequent to our notice of proposed rulemaking, section 712 of the FY 1999 National Defense Authorization Act modified 10 U.S.C. 1097a to require annual enrollment periods but required that TRICARE Prime enrollment be automatically renewed upon the expiration of the enrollment unless the renewal is declined. The Act also requires that the enrollee, or the sponsor in the case of an enrolled family member, be notified in writing no later than 15 days before the enrollment expiration date and afforded the opportunity to decline enrollment.

Provisions of the Final Rule

The final rule has been modified to implement the statutory direction given in the FY 1999 National Defense Authorization Act.

2. Changes to Installment Payments of Enrollment Fees (revision to section 199.17(o)(3))

Provisions of the Proposed Rule

When we first instituted the requirement for annual TRICARE Prime enrollment fees for certain beneficiary categories, we allowed for quarterly installment payments of the enrollment fees. In keeping with the nature of a more continuous enrollment process, we proposed that retirees, their families, and other beneficiaries required to pay an annual enrollment fee would be

offered additional flexibility in fee payment by allowing for monthly or quarterly installment payments of enrollment fees. Subsequent to our notice of proposed rulemaking, section 712 of the FY 1999 National Defense Authorization Act modified 10 U.S.C. 1097a to expand payment options to include monthly payment of enrollment fees via an allotment from retired or retainer pay, or monthly payment via electronic funds transfer from a financial institution.

Provisions of the Final Rule

The final rule has been modified to implement the statutory direction given in the FY 1999 National Defense Authorization Act.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals and disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. Chapter 55.

2. Section 199.17 is amended by revising paragraphs (o)(2) and (o)(3), redesignating paragraphs (o)(4) and (o)(5) and (o)(5) and (o)(6), and adding new paragraph (o)(4), to read as follows:

§ 199.17 TRICARE Program.

* * * * *

(o) * * *

(2) *Enrollment period.* Beneficiaries who select the TRICARE Prime option remain enrolled for 12 month increments until: they take action to disenroll; they are no longer eligible for enrollment in TRICARE Prime; or they are disenrolled for failure to pay required enrollment fees. For those who remain eligible for TRICAREPrime enrollment, no later than 15 days before the expiration date of an enrollment, the sponsor will be sent a written notification of the pending expiration and renewal of the TRICARE Prime enrollment. TRICARE Prime enrollments shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined by the sponsor. Termination of enrollment for failure to pay enrollment fees is addressed in paragraph (o)(3) of this section.

(3) *Installment payments of enrollment fee.* The enrollment fee required by § 199.18(c) may be paid in monthly or quarterly installments. Monthly fees may be payable by an allotment from retired or retainer pay, or paid from a financial institution through an electronic transfer of funds. For beneficiaries paying enrollment fees on an installment basis, failure to make a required installment payment on a timely basis [including a grace period, as determined by the Assistant Secretary of Defense (Health Affairs)] will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year.

(4) *Voluntary disenrollment.* Any beneficiary for whom enrollment in Prime is voluntary may disenroll at any time. Disenrollment will take effect in accordance with administrative procedures established by the Assistant Secretary of Defense (Health Affairs). Beneficiaries who disenroll prior to their annual enrollment renewal date will not be eligible to reenroll in Prime for a one-year period from the effective date of the disenrollment. This one year exclusion may be waived by the Assistant Secretary of Defense (Health Affairs) based on extraordinary circumstances.

* * * * *

Dated: March 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–7034 Filed 3–22–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–010]

RIN 2115–AE46

Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the Crawford Bay Crew Classic to be held on the waters of the Western Branch, Elizabeth River, Portsmouth, Virginia. These regulations are needed to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectator craft, and other vessels transiting the event area. This action is intended to enhance the safety of life and property during the event.

EFFECTIVE DATES: This temporary final rule is effective from 11 a.m. to 6 p.m. on March 26, 1999, and from 6:30 a.m. to 6 p.m. on March 27, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Allen Walther, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, Virginia, 23703, telephone number (757) 483–8521.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Publishing a notice of proposed rulemaking and delaying the effective date would be contrary to the public interest because immediate action is needed to protect event participants, spectator craft, and transient vessel traffic.

Background and Purpose

Port Events, Inc., will hold the ''Crawford Bay Crew Classic'' on the waters of the Western Branch, Elizabeth River. The event will consist of intercollegiate crew competition along a 2000-meter course. A large fleet of spectator vessels is anticipated. Because of the need for vessel control during the crew competition, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators, and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Western Branch, Elizabeth River. The regulations will be in effect from 11 a.m. to 6 p.m. on March 26, 1999, and from 6:30 a.m. to 6 p.m. on March 27, 1999, and will restrict general navigation in the regulated areas during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the crew competition to enhance the safety of participants, spectators, and transiting vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under the order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the facts that the regulated area will only be in effect for a limited amount of time and that the Coast Guard Patrol Commander will allow vessel transits through the regulated area during times that the race participants are not competing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the event not lasting long, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no Collection-of-Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–010, is added to read as follows:

§ 100.35–T05–010 Western Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions*—(1) *Regulated Area.* The waters of the Western Branch, Elizabeth River, bounded by a line connecting the following points:

Latitude	Longitude
36°50.3′ North	076°23.1′ West, to
36°50.3′ North	076°21.7′ West, to
36°50.2′ North	076°21.7′ West, to
36°50.2′ North	076°23.1′ West, to
36°50.3′ North	076°23.1′ West

All coordinates refer to Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations*—(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by an official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Dates.* The regulated area is effective from 11 a.m. to 6 p.m. on March 26, 1999, and from 6:30 a.m. to 6 p.m. on March 27, 1999.

Dated: March 3, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–7093 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–011]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.511 during the 20th Annual Seminar on Safety at Sea, a marine event to be held March 27, 1999, on Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic in the vicinity of the U.S. Naval Academy because of the confined nature of the waterway and expected vessel congestion during the pyrotechnic display and helicopter-rescue demonstration. The effect will be to restrict general navigation in the regulated area for the safety of spectators, event participants, and other vessels transiting the event area.

EFFECTIVE DATE: 33 CFR 100.511 is effective from 11:30 a.m. to 3 p.m. on March 27, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674..

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy Sailing Squadron will

sponsor the 20th Annual Seminar on Safety at Sea on the Severn River, near the U.S. Naval Academy, Annapolis, Maryland. Waterborne activities will include demonstrations of life rafts, pyrotechnics, man-overboard procedures, and a helicopter rescue. To ensure the safety of participants and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, no vessel may enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area, but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 3, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–7094 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–99–009]

RIM 2115–AA97

Safety Zone: Chesapeake Bay, Patapsco River, Inner Harbor, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone during the movement of the schooner Lady Maryland upon the waters of the Inner Harbor, Baltimore, MD. This safety zone is necessary to protect the safety of life and property of the participants, spectators and mariners on U.S. navigable waters during the effective dates.

EFFECTIVE DATES: This regulation will be effective from 12:30 p.m. to 2:30 p.m. March 27, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Event Coordinator, Activities Baltimore, 2401 Hawkins Point Rd., Baltimore, Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this rule and good cause exists for making it effective less than 30 days after **Federal Register** publication. The application for this event was not received until February 2, 1999. There was not sufficient time to publish a proposed rule in advance of the event. Publishing an NPRM and delaying its effective date would be contrary to the public interest because immediate action is needed to prevent a serious threat to spectators and vessels transiting in the vicinity.

Discussion of Regulation

The Living Classrooms Foundation will provide the schooner Lady Maryland for a mock gun battle as part of a promotional filming in the Inner Harbor for the Arts and Entertainment (A&E) Network on March 27, 1999. The Coast Guard is establishing a temporary safety zone 300 yards ahead and astern of, and 300 yards to port and starboard side of, the schooner Lady Maryland. A Coast Guard patrol commander will be assigned to control spectator and commercial vessels during this event. This safety zone is effective from 12:30 p.m. to 2:30 p.m. March 27, 1999. The Captain of the Port will notify the public of changes in the status of the zone by Marine Safety Radio Broadcast. Entry into this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 F.R. 11040; February 26, 1979). This temporary rule affects only a limited area outside of the main shipping channels. Therefore, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Regulations establishing safety zones are excluded under that authority.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; and 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. A temporary § 165.T05–009 is added to read as follows:

§ 165.T05–009 Safety Zone: Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Location.* The following area is a safety zone: All waters of the Inner Harbor, adjacent to Hawkins Point Shoal, enclosed within an area approximately 300 yards ahead and astern of, and 300 yards to port and starboard of, the schooner Lady Maryland.

(b) *Definitions.* (1) Captain of the Port (COTP) means the Commanding Officer of Coast Guard Activities Baltimore or any commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(c) *Regulations.* (1) In accordance with the general requirements in section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) Persons or vessels wishing to enter or pass through the safety zone must first request authorization from the COTP or designated representative. Coast Guard patrol vessels enforcing the safety zone can be contacted on VHF–FM Marine Band Radio, channel 16. The Captain of the Port can be contacted at telephone number (410) 576–2693.

(3) The Captain of the Port will notify the public of any changes in the status of this zone by a Marine Safety Radio

Broadcast on VHF–FM Marine Band Radio, channel 22 (157.1 MHz).

(d) *Effective dates:* This regulation is effective from 12:30 p.m. to 2:30 p.m. March 27, 1999.

Dated: March 4, 1999.

C.L. Miller,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 99–7092 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

CFR Correction

In Title 40 of the Code of Federal Regulations, part 52 (§ § 52.01 to 52.1018), revised as of July 1, 1998, page 106, § 52.220 is corrected by adding paragraph (c)(21)(vi)(B) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(21) * * *

(vi) * * *

(B) Previously approved on May 11, 1977 and now deleted without replacement Rule 41.

* * * * *

[FR Doc. 99–55511 Filed 3–22–99; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 41

[CC Docket No. 98–119, FCC 98–344]

1998 Biennial Regulatory Review—Elimination of Rules Concerning Telegraph and Telephone Franks

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission released a Report and Order which eliminated the rules governing the issuance of franks and certain reports by communications common carriers. The elimination of this rule does not restrict privileges that are statutorily recognized, and will not affect other obligations imposed by the Communications Act, or confer any additional pricing flexibility on dominant or other carriers.

DATES EFFECTIVE: April 22, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Deputy Chief of the Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking in this proceeding was released July 21, 1998. See 63 FR 41757, published August 5, 1998. This is a compendium of the Commission's Report and Order, CC Docket 98–119, adopted December 22, 1998, and released February 3, 1999, pursuant to our 1998 Biennial Review of Regulations as required by Section 11(b) of the Communications Act of 1934, as amended, 47 U.S.C. 161(b). The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington. DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

List of Subjects in 47 CFR Part 41

Telegraph and telephone franks.

Rule Change

PART 41—[REMOVED]

Accordingly, under the authority of Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 210, 48 Stat. 1073, as amended (47 U.S.C. 210), Title 47 CFR chapter 1 is amended by removing part 41.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7059 Filed 3–22–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Part 1420

[Docket No. BTS–98–4659]

RIN 2139–AA05

Revision to Reporting Requirements for Motor Carriers of Property and Household Goods

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Final rule.

SUMMARY: The ICC Termination Act of 1995 transferred the motor carrier financial and operating data collection program to the Department of Transportation and made several changes to it. This final rule revises the data collection forms and reduces the reporting requirements. Class I and Class II motor carriers of property are now required to file a revised annual report form called Form M. Class I carriers are also required to file quarterly report Form QFR, which has been substantially reduced. The rules also adopt a system whereby motor carriers can request exemptions from filing and from public release of their reported data.

DATES: This final rule is effective on April 22, 1999.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–2, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You can examine all comments that were submitted to the Rules Docket concerning this rulemaking at: Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Internet users can access the comments at the address: http://dms.dot.gov. Search for Docket Number 4659. Please follow the instructions online for more information and help.

You can download an electronic copy of this document using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. If you have access to the Internet, you can obtain an electronic copy at http://www.bts.gov/mcs/rulemaking.htm.

II. Copies of the Revised Report Forms

If you have Internet access, you can view and download copies of the revised Form M and Form QFR at www.bts.gov/mcs/rulemaking.htm. You can also obtain copies by calling BTS at (202) 366–4383. Carriers required to file report will receive a full information package, including the revised report forms.

III. Regulatory History

On November 3, 1998, the Bureau of Transportation Statistics (BTS) published a Notice of Proposed Rulemaking (NPRM) which proposed rules for revising the data collected from Class I and II motor carriers of property and household goods (63 FR 59263). It also proposed a system for carriers to request exemptions from filing reports and exemptions from public release of their reported data. On November 25, 1998, BTS published a notice extending

the comment period until January 15, 1999 (63 FR 65163). BTS is publishing a Supplemental Notice of Proposed Rulemaking (SNPRM) on a related topic in this issue of the **Federal Register**. For more information about the authority and background to this rulemaking, please refer to the NPRM.

IV. Background

The U.S. government has collected information on motor carriers for much of this century, even after the industry was greatly deregulated. The government and others have used these data in a number of ways and for a number of purposes. The data collection rules were last reviewed and modified by the Interstate Commerce Commission (ICC) in 1994. Under the data collection program now in place, motor carriers of property are classified based on revenue. Class I carriers are those with annual operating revenues of $10 million or more, and they file annual report Form M–1 and quarterly report Form QFR. Class II carriers have annual operating revenues between $3 and $10 million, file a simpler annual report, Form M–2, and do not file a quarterly report. Class III carriers have annual operating revenues of less than $3 million and are not required to file any periodic financial reports. Unless otherwise prohibited by law, individual carrier reports are made available to the public.

Since the last change in 1994, the ICC Termination Act of 1995 (the ICCTA) made several changes to the ICC's data collection program and transferred it to the Department of Transportation (DOT). Similar to the legislation replaced by the ICCTA, then codified at 49 U.S.C. 11145, the ICCTA requires DOT to collect certain data from motor carriers of property and motor carriers of passengers:

> The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

The former 49 U.S.C. 11145 did not explicitly charge the ICC to collect information relevant to safety and did not specify minimum data to be collected. The ICCTA also allows DOT to collect certain other data as needed:

> The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

The ICCTA specifies the criteria to be used in designing the reporting program. DOT must consider: (1) Safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. In the ICCTA, Congress explicitly called on DOT to ''streamline and simplify'' these reporting requirements to the maximum extent practicable.

Unlike the former 49 U.S.C. 11145, the ICCTA authorizes two types of exemptions from the reporting requirements. Each exemption is based on certain criteria and is granted for a three-year period. The first is an exemption from filing report forms. The requestor ''must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.'' The second is an exemption from public release of data reported by the carrier. Similar to the other exemption, the requestor must demonstrate that ''the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.'' Further, for the latter exemption the requestor must not be a publicly held corporation or must not be subject to financial reporting requirements of the Securities and Exchange Commission.

In light of the ICCTA, we (BTS) believe it is necessary for us to weigh the continuing need for gathering accurate and consistent data against the burden the reporting requirements place on carriers who must comply with them. On November 3, 1998, BTS issued a Notice of Proposed Rulemaking (NPRM), which proposed changes to the annual and quarterly data collection forms and proposed procedures for carriers to request exemptions from filing and from public release of their reports. We sought comments concerning the use of the data we collect, why we should or should not continue to collect those data, and what procedures we should have for carriers that believe data in their report contain confidential business information. In response, 21 organizations and individuals submitted comments. The comments came from organizations in three broad groups—respondents (motor carriers and trade associations), data analysts, and other data users.

V. General Summary of the Comments

Some commenters (mostly trucking companies) advocate reducing or eliminating the reporting requirement. They argue that carrier reports represent an unwarranted intrusion into their privacy by allowing competitors to see their financial statements and are unnecessary because the reports are not used for any regulatory purpose. That is, while none of the commenters suggested the burden of completing the proposed forms was significant, some wished to protect data they consider to be confidential. Other commenters (including some representing carriers and carrier associations) felt the proposal struck the right balance between the needs of respondents and the needs of data users. A third group requested that more data be collected because the proposed reduction meant a loss in the utility of the data.

The comments we received confirm that carrier data are used and needed by a diversity of parties and that some of these uses require access to individual carrier data. They are used by private entities and governmental bodies to track the performance of the motor carrier industry and subgroups within it. Some representatives and associations of insurance companies state that knowledge of the financial condition, type of commodities hauled, and equipment of the carriers is essential to their underwriting operations. The data collected helps users review the financial status of Class I and Class II motor carriers to evaluate potential safety risks for particular firms and to define the aggregate relationship between financial conditions and safety. Information plays a role in analyzing various aspects of the motor carrier industry such as safety, productivity, and its role in the economy. Carriers use the information to benchmark their performance in order to strive for continuous improvement and efficiency.

After considering arguments on both sides of these issues, we conclude that we should go forward with the proposed annual and quarterly report forms with relatively minor modifications. We also conclude that the proposed procedures for handling requests for confidentiality and for exemptions from filing should be modified to clarify the standards that will be used, improve the process for all involved, and provide stronger assurances that firms will not be competitively harmed.

VI. The Report Forms

For BTS, the basic purposes of the data collection program are: (1) to provide the data DOT needs to fulfill its

responsibilities in overseeing the motor carrier industry; and (2) to help BTS fulfill its own statutory mandate to provide information on all modes of transportation for decision makers in the public and private sectors. We recognize that BTS and others in DOT have not made much direct use of individual carrier data. Rather, we have relied on summary data to better understand the industry. Under BTS's general statutory mandate (49 U.S.C. 111) and under the ICCTA, BTS is required to consider not only the Department of Transportation's information needs but also how information is used by others, including those in the private sector. Thus it is relevant that data collected may help third parties, such as motor carriers, insurance companies, and researchers, do their jobs. Given the ICCTA's safety emphasis, we must also give weight to third party use of the data to enhance safety, a use cited in comments by labor unions, representatives and associations of insurance companies, and university researchers. Collecting only bottom-line balance sheet and income statement data, as some commenters favor, would not be useful for analyzing industry and carrier safety. Conversely, providing the scope and detail of data desired by all users would fail to streamline and simplify the reporting requirements. Therefore, BTS has retained data items of critical importance and eliminated those that are now of more limited value. The revisions to the report forms represent a balance between the interest in reducing burden and the interest in providing important safety and economic data concerning the trucking industry.

The Annual Form

While some commenters endorsed the proposed forms, others suggested specific changes. Those supporting a reduction in proposed Form M wanted something approaching the minimum data requirements identified in the ICCTA—basic balance sheets and income statements. Those supporting expanding proposed Form M requested: (1) Greater detail on payables, receivables, and debt; (2) additional expense detail; (3) employment, compensation, and benefits data; (4) operating statistics with detail by industry segments; and (5) expanding the list of revenue commodity groups. The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) has requested that BTS retain the following data contained in the proposed form: (1) The operating revenue section; (2) the operating supplies and expenses section; (3) most of the data items listed under miscellaneous expenses; (4) miles, tons, and ton-miles; and (5) the revenue equipment section. They use the data in preparing the national accounts of the United States economy.

In light of these comments, we will make some changes to the annual form we proposed. The resulting new form will still greatly reduce the amount of data currently collected. Most of the changes being made to the proposed Form M are technical changes to data items that will not add to reporting burden. These changes will make reporting more consistent with carriers' internal systems and therefore easier. The substantive changes being made to the proposed Form M are: (1) Expanding the Revenue Commodity Group table to include more freight types; (2) removing detail on Carrier Operating Property; (3) splitting Freight Operating Revenue into two categories—Intercity and Other; (4) increasing the categories for wages in the Wages and Salaries section from two to four; (5) adding separate line items for Interest Expenses and Extraordinary Items to the Net Income section; (6) dividing the Operating Statistics section into Less than Truckload and Truckload for general freight carriers; (7) adding a section on Employment and Compensation; and (8) adding a column for Cost of Units Acquired to the Revenue Equipment section. Except for the last, each of these substantive additions is an item already reported on both the current Form M–1 and Form M–2. Many of the changes are being made to provide categories that are consistent with motor carrier accounting systems and prior data collections, and will permit the kinds of distinctions and analyses needed for safety and other purposes. The employment data, containing the minimum amount of detail needed for most analyses, are being added in response to commenters who noted the importance of this information, particularly to analysis regarding driver shortage and driver hours of service issues.

The revised Form M will have only five schedules (balance sheet, income statement, operating information, revenue equipment, and employment information) and will require little time to complete. The creation of a Form M will result in a significant reduction in reporting burden for Class I carriers, while continuing to provide key information on their operations. In fact, we estimate that it should take no more than 10 hours annually to prepare Form M, compared to 25 hours for Form M–1. Although the burden will remain the same for Class II carriers, the ICC greatly reduced Class II reporting burden in 1994 with the introduction of the current M–2.

The Quarterly Form

Commenters representing the motor carrier industry disagreed about whether to eliminate the quarterly reporting requirement, keep the requirement as proposed, or expand on the proposal. All data analysts and users supported keeping and/or expanding the quarterly report. Some commenters called for additional data based on the need for timely information to detect motor carrier financial difficulties, and therefore potential safety problems. One commenting carrier wanted quarterly data for benchmarking its operations. Suggested additions included collection of more detailed information on freight revenue and on non-operating income, and collection of operating information detailed by industry segment. BEA has requested that BTS retain quarterly collection of operating revenue and expenses for its quarterly Gross Domestic Product estimates.

We will retain Form QFR, albeit greatly reduced from its current size. As the pace of society quickens so does the need for more timely data. Yet, because of the burden filing four times a year represents, we have reduced the number of data items to a small fraction of what is currently collected. A half-dozen line items are being added to the proposed form, though the resulting survey will still be much shorter than the current QFR. The report will include net income and a small amount of operating information to keep the form consistent with the annual data collection. The basic quarterly information we will collect is described by commenters as being easy to compile since it is maintained for other internal purposes. Yet it will help users monitor emerging trends in the dynamic trucking industry and will enable carriers to benchmark their operations. The public will also be able to periodically monitor the strength and viability of carriers, particularly those experiencing financial difficulties.

Reporting Carriers

The current program collects data from only Class I and II carriers. This has been based on the assumption that data from the largest carriers represent an accurate indicator of the industry because these companies comprise such a large share of the industry revenue and traffic volume. We could reduce the universe of reporting carriers further still, as one commenter suggested, by changing the revenue limits of the classifications. However, this could seriously hamper BTS's function in providing data for understanding the

industry and monitoring its health. Therefore, BTS will retain the current classification definitions. One commenter called for an exemption from reporting for all privately held companies stating that the collected information is private and therefore confidential. Since the vast majority of carriers are privately held, we believe the data collection would be rendered meaningless and this would subvert the intent of the ICCTA.

VII. Confidentiality

Some commenters expressed concerns about the proposed procedures for handling requests for exemptions from filing and exemptions from the public release of data. A major concern was about the public release of individual carrier data. The commenters state that many carriers are privately held companies and that competitive harm could result from disclosing the information to third parties, particularly shippers or competing carriers. These commenters suggested changes to the proposal they believe would better protect carriers from potential competitive harm. First, BTS could restrict access to individual carrier data. Second, assuming individual carrier data are made publicly available, BTS could limit the data items it collects. Potential detrimental affects would be reduced if BTS collected fewer data items or less detailed data.

Other commenters, including some representing motor carriers, supported the proposed procedures for handling requests for exemptions from filing and public release of carrier reports. These commenters state that the data collected are of critical importance to understanding the motor carrier industry and to monitoring motor carrier safety. Therefore, the information is in the public interest and DOT should not withhold it from public release. They state that not only should the Department monitor the financial condition of each motor carrier in order to protect the public interest, but that the prompt release of the information will result in even closer scrutiny and a concomitant increase in the protection accorded the public.

Exemptions From Filing

Some commenters disagreed with BTS's proposal that exemptions from filing not be allowed since no competitive harm could result if reports are kept confidential. They pointed out that publicly held firms cannot request confidentiality protection. Furthermore, all carriers should have at least the option to request relief from the filing requirement as allowed by the ICCTA. Unlike exemptions from public release, notice and comment are not necessary with an exemption from filing, plus the carrier would be relieved of submitting reports.

BTS will allow carriers to request exemptions from filing based on confidential business information. As required by the ICCTA, the carrier will need to ''demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.'' As discussed below, this is the same standard as for Exemption Four of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). BTS notes that while it will consider all requests, it will be difficult for a carrier to meet the minimum showing. A privately held carrier that meets the requirements would also be eligible for confidentiality protection and the availability of this option would likely render moot any claim for further competitive harm requiring an exemption from filing. For a publicly held carrier, most of the reported information would likely be publicly available through other channels. Nonetheless, BTS will consider requests for exemptions from filing.

Exemptions From Public Release

Regarding the procedures for requesting confidentiality, a number of changes were suggested. The comments were that: (1) BTS should publish a notice indicating its decisions; (2) parties wishing to comment on requests should have access to the request; (3) reports should be held confidential while a request is pending; (4) requests should be allowed within a reasonable time after a report's deadline; (5) requests should be allowed anytime, regardless of the report due date; (6) BTS should decide the requests individually instead of en-masse; and (7) if a request is granted the confidentiality period should last three years.

Based on these comments, BTS will use the following revised procedure. A carrier may request that its annual report be exempt from public release. If so, the carrier must submit a request that must be received by the annual report due date. This gives carriers flexibility in making their request. BTS, in response to comments received, will use as the received date either the date the request is physically received or the date it is postmarked. BTS will allow a late request if there are extenuating circumstances and the requesting carrier gives adequate notice within a reasonable time of the extenuating circumstances. To protect the data of potential requestors, all annual reports received by BTS will be withheld from public release from the time they are received until at least the annual report's due date, which is also the request's due date. Carriers making a request after the report's due date, except as discussed above, will not be able to later request confidentiality for the report. The report either would have already been submitted, and therefore already been available to the public, or the report should have been submitted but was not.

After the annual report's due date, BTS will continue to withhold from public release those reports from carriers that have requested confidentiality. BTS will publish a **Federal Register** notice inviting public comment on the requests. BTS plans to use the DOT Dockets Management System to facilitate access to the requests and comments received. BTS will decide each request within 90 days of the annual report's due date. After the 90-day period from the annual report's due date, BTS will continue to withhold from public release those reports receiving an exemption from public release. If an exemption is granted, the confidentiality period will last for three years, unless otherwise required by law.

If a carrier wishes to request confidentiality for quarterly reports, it must submit its request at the same time it submits its request covering the annual report. For example, to request confidentiality for any or all of the four 1999 Form QFRs, the request must be included with the petition covering the 1998 Form M. Both requests will be decided in the 90-day period and quarterly reports will be released neither before the request due date nor while there is a request pending. As noted subsequently, BTS is granting an extension for filing of the 1998 Form M and for the Form QFR for the first quarter of 1999.

One commenter, a motor carrier, wanted the 90-day decision period to begin not on the report due date but on the date the request was made. We point out that all carriers' reports will be withheld from public release up to the report's due date and any report for which there is a pending request will be withheld from public release until a decision is made. Furthermore, BTS will not decide the requests en-masse. Regardless of the decision date, each request will be decided individually since a request must be based on circumstances particular to a carrier and based on the explanation it provides. Thus, a carrier would not benefit if the decision period started before the report

due date. This system also gives carriers more leeway for submitting requests for confidentiality than the one the commenter advocates. Under the latter, a request would have to be made only before or simultaneously with filing of the carrier's report. But under the former, a request could be made anytime up to the report's due date, regardless of when the carrier files its report. Perhaps a carrier may wish to request confidentiality, and wait for the decision, before filing its report. However, regardless of when the decision is made and regardless of whether the request is granted or denied, the report is required under law by the due date.

Regarding the criteria for deciding requests, some commenters supported the proposed standard that a carrier should be required to explain the particular or unique circumstances that would show why its data should be treated differently than other carriers' data. Other commenters felt the proposed confidentiality standards were vague and asked BTS to further clarify them. One objected to the requirement that a carrier show specific evidence of competitive harm favoring instead having the carrier simply allege harm and show evidence that it does not customarily release the data. Another commenter wanted BTS to make a blanket determination that all privately held carriers meet the threshold for confidentiality protection since it is common knowledge that the information is sensitive and since public release would not be in the public interest.

The ICCTA's standard for withholding information from public release is the same as the standard contained in Exemption Four FOIA. Exemption four covers ''trade secrets and commercial or financial information obtained from a person (that is) privileged or confidential.'' Since the standards are the same, BTS will follow FOIA law on the standard that must be met. Information is confidential under Exemption Four if disclosure would be likely to cause substantial harm to the competitive position of the person from whom the information was obtained or would impair a protectable government interest. To clarify the criteria and keep it closely in line with established FOIA law, BTS will change the wording of its proposal. BTS will require that a carrier provide information on (1) whether the information is confidential; (2) the measures taken by carrier to prevent disclosure; and (3) either how disclosure would cause competitive harm or how disclosure would impair a protectable government interest. Under this showing, a carrier must do more than make a ''blanket'' assertion or conclusory statement that it meets the standard for an exemption from public release. These more detailed rules are based on those issued by the Department of Transportation's National Highway Traffic Safety Administration. Those rules allow persons to request confidential treatment of data they submit to that agency and they have worked well for many years (see 49 CFR part 512).

VIII. Extension of Report Due Dates

Usually, the annual report covering 1998 (the 1998 Form M) would be due on March 31, 1999. Because of the revisions to regulations contained in this final rule, including changes to the forms, BTS is hereby extending that report's due date. The 1998 annual report must be filed on or before May 31, 1999. This will give carriers enough time to complete the forms. As soon as possible, BTS will send the revised Form M to carriers and make it available on its web site at: www.bts.gov/mcs/info.html. We note that very little has changed on the form, except to remove data items. Where changes have been made to a data item, it has usually been done to make it more consistent with carriers' internal systems and thus easier to complete.

A request for an exemption from filing (covering just the annual report or covering the annual report and the reports for the following quarters) must be received by the due date of the annual report. Therefore, a carrier submitting a request for an exemption from filing the 1998 Form M and/or the 1999 QFRs, must do so before May 31, 1999. Likewise, a request for an exemption from public release (covering just the annual report or covering the annual report and the reports for the following quarters) must be received by the due date of the annual report. Again, a request covering the 1998 Form M and/or the 1999 QFRs must therefore be received by May 31, 1999. The extension of the 1998 annual report due date will also affect the date that carrier reports are made publicly available under the new 49 CFR 1420.10.

The quarterly report for the first quarter of 1999 is normally due on April 30, 1999. Because of the revisions to regulations contained in this final rule, including changes to the Form QFR, BTS is hereby extending the due date for the first quarter of 1999. The report will also be due on May 31, 1999.

IX. Supplemental Notice of Proposed Rulemaking

Today, BTS is also publishing a Supplemental Notice of Proposed Rulemaking (SNPRM). This is being done to address an issue that was raised by some commenters but was not part of the NPRM. These commenters urged BTS not to release individual carrier data at all. They stated that there is no strong public interest in having the information made available to the public, or at least available to those that would use it for private purposes, such as competing carriers. Furthermore, they feel the information is commercially sensitive. This issue is outside of the scope of the NPRM, which only addressed procedures and criteria for individual carriers to request exemptions from filing and public release of data based on individual circumstances. It did not ask whether all or any data collected should be generally withheld because of the confidential nature of the data. The SNPRM proposes revised rules on confidentiality that are designed to minimize any potential detrimental affects of public access to individual carrier data to the extent possible under law. They do this by restricting access to individual carrier data for those data items that are most sensitive. For more information on the SNPRM, please refer to the Proposed Rules section in this issue of the **Federal Register**.

X. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore is not reviewed by the Office of Management and Budget.

This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). It would reduce industry reporting burden by 18,900 hours or 39 percent. BTS estimates that the annual cost of reporting to be just over $1.1 million for the industry. This breaks down to $456 per year for Class I carriers and $380 per year for Class II carriers. The estimate is based on reporting costs of $38 per hour including overhead.

The major beneficiaries of the data collection are the federal government, the motor carrier industry, industry associations, transportation investment analysts, transportation research analysts, and motor carrier safety analysts. The program provides data that are used in developing the national accounts and preparing the Gross

Domestic Product estimates, data for monitoring industry trends, and data useful to the public and private sectors regarding the operation and health of the trucking industry and individual carriers.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), BTS must consider whether a final rule would have a significant economic impact on a substantial number of small entities. The definition of ''small business'' is contained in the Small Business Administration's small business size standard regulations. For motor carriers of property, small businesses are those with annual receipts of up to $18.5 million. Under the current classification, there are about 2,800 reporting carriers of which an estimated 2,180 (or 78 percent) are small businesses (all Class II carriers and 31 percent of Class I carriers are classified as small businesses). The changes decrease reporting burden hours for Class I carriers by 64 percent. In addition, the changes do not impose any new regulatory requirements, directly or indirectly, on small entities. Therefore, BTS certifies this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

The Form M and Form QFR have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for these information collections are OMB Numbers 2139–0002 and 2139–0004. Administration: Bureau of Transportation Statistics. Titles: Quarterly Report of Class I Motor Carriers of Property and Household Goods, Annual Report of Class I and Class II Motor Carriers of Property and Household Goods. Need for Information: information that are used in developing the national accounts and preparing the Gross Domestic Product estimates, data for monitoring industry trends, and data useful to the public and private sectors regarding the operation and health of the trucking industry and individual carriers. Frequency: Quarterly and Annually. Burden Estimate: 29,800 annual hours. Average Annual Burden Hours per Respondent: Class I carriers—12 annual hours, Class II carriers—10 annual hours. For further information contact: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention Desk Officer for the Bureau of Transportation Statistics or David Mednick at the address listed above under **FOR FURTHER INFORMATION CONTACT.**

Other Determinations

BTS has analyzed the this action for the purposes of the National Environmental Protection Act. It will not have a significant impact upon the quality of the human environment or the conservation of energy resources. Accordingly, an Environmental Impact Statement is not required. BTS has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism'') and determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule. Similarly, because this rule does not create an unfunded Federal mandate on state, local or tribal governments the requirements of section 1(a) of Executive Order 12875, Enhancing Intergovernmental Partnerships, do not apply to this rule. This final rule does not have potential takings implication under Executive Order 12630 because it does not authorize any takings. In accordance with Executive Order 12630, regarding Governmental Action and Interference with Constitutionally Protected Property Rights, BTS finds that this final rule implicates no takings, in that it does not propose or implement licensing, permitting, or other conditions, requirements, or limitations on private use, nor does it require dedications or exactions from owners of private property. BTS has reviewed this final rule in accordance with Executive Order 12988, Civil Justice Reform, and has determined that this rule meets the applicable standards provided in section 3(b) of the Executive Order. Nor does this rule require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks.

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 number 2139–AA05 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 1420

Motor carriers, Reporting and classification.

Accordingly, the Bureau of Transportation Statistics amends 49 CFR part 1420 Reports of Motor Carriers, as follows:

PART 1420—REPORTS OF MOTOR CARRIERS

1. The authority citation for part 1420 is revised to read as follows:

Authority: 49 U.S.C. 14123.

2. Section 1420.1 is revised to read as follows:

§ 1420.1 Annual reports of motor carriers of property, motor carriers of household goods, and dual property carriers.

(a) *Annual Report Form M.* All class I and class II common and contract carriers of property, including household goods and dual property motor carriers, must file Motor Carrier Annual Report Form M (Form M). Carriers must file the annual report on or before March 31 of the year following the year to which it relates. For classification criteria, see § 1420.2.

(b) *Quarterly Report Form QFR.* All class I common motor carriers of property and class I household goods motor carriers must file Motor Carrier Quarterly Report Form QFR (Form QFR). The quarterly accounting periods end on March 31, June 30, September 30, and December 31. The quarterly reports must be filed within 30 calendar days after the end of the reporting quarter.

(c) *Where to file reports.* Carriers must file the quarterly and annual reports with the Bureau of Transportation Statistics at the address in § 1420.6. You can obtain blank copies of the report forms from the Bureau of Transportation Statistics.

3. In § 1420.2, paragraph (a) remove the phrase ''subject to the Interstate Commerce Act''.

4. In § 1420.2, paragraph (b)(4) is revised to read as follows:

§ 1420.2 Classification of carriers—motor carriers of property, household goods carriers, and dual property carriers.

* * * * *

(b) * * *

(4) Carriers must notify the Bureau of Transportation Statistics (BTS) of any

change in classification or any change in annual operating revenues that would cause a change in classification. The carrier may request a waiver or an exception from these regulations in unusual or extenuating circumstances, where the classification process will unduly burden the carrier, such as partial liquidation or curtailment or elimination of contracted services. The request must be in writing, specifying the conditions justifying the waiver or exception. BTS will notify the carriers of any change in classification.

* * * * *

5. In § 1420.2(b)(5), remove the term ''an Annual Report (Form M–1 or Form M–2)'' and add ''Annual Report Form M'' in its place.

6. In § 1420.2, paragraph (c) is removed (Note A is unchanged).

7. Section 1420.8 is added to read as follows:

§ 1420.8 Requests for exemptions from filing.

(a) *In General.* This section governs requests for exemptions from filing of reports required under § 1420.1.

(b) *Criteria.* The Bureau of Transportation Statistics (BTS) may grant a request upon a proper showing that the exemption is necessary to preserve confidential business information that is not otherwise publicly available. Information is considered to be confidential when:

(1) Disclosure of the information in the carrier's report would be likely to cause substantial harm to the carrier's competitive position; or

(2) Disclosure of information in the report would be likely to impair protectable government interests.

(c) *Contents of a request.* The contents of a request for an exemption from filing must contain, at a minimum, the contents that are required for a request for an exemption from public release contained in § 1420.9(c). A carrier's request may include any other grounds as to why the request should be granted.

(d) *When requests are due.* The timing of a request for an exemption from filing is the same as the timing for a request for an exemption from public release contained in § 1420.9(d). The table below summarizes report and request due dates.

Report	Report due by	Request due by
Annual Form M	March 31	March 31
First Quarter Form QFR	April 30	March 31
Second Quarter Form QFR	July 31	March 31
Third Quarter Form QFR	October 31	March 31
Fourth Quarter Form QFR	January 31	March 31

(e) *Decision to grant or deny a request.*

(1) A request will be denied if it fails to provide all of the supporting information required in paragraph (c) of this section or if the supporting information is insufficient to establish that information in the carrier's report meets the criteria in paragraph (b) of this section.

(2) BTS will grant or deny each request within a reasonable period of time. BTS will notify the carrier of its decision. The decision by BTS shall be administratively final.

(f) *Pendency.* While a request is pending, the carrier is required to submit any reports required under § 1420.1.

(g) *Period of exemptions.* If a request for an exemption under this section is granted, the carrier will be exempt from the reporting requirements of § 1420.1 for a period of three reporting years.

(h) *Modification of a decision to grant a request.* If a request is granted it remains in effect in accordance with its terms, unless modified by a later finding that the decision was clearly erroneous. If BTS believes such a finding should be made, BTS will notify the requesting carrier in writing of the reasons for the modification. The carrier may seek reconsideration of the modification.

8. Section 1420.9 is added to read as follows:

§ 1420.9 Requests for exemptions from public release.

(a) *In General.* This section governs requests for exemptions from public release of reports filed under § 1420.1.

(b) *Criteria.* The Bureau of Transportation Statistics (BTS) will grant a request upon a proper showing that the carrier is not a publicly held corporation or that the carrier is not subject to financial reporting requirements of the Securities and Exchange Commission, and that the exemption is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4). Information is considered to be confidential when:

(1) Disclosure of the information in the carrier's report would be likely to cause substantial harm to the carrier's competitive position; or

(2) Disclosure of information in the report would be likely to impair protectable government interests.

(c) *Contents of a request.* A request for an exemption from public release must contain information supporting the claim. While the supporting information may contain opinions, the request must consist of objective data to the extent possible. General or nonspecific assertions or analysis will be insufficient to support a request if BTS is unable to find that the criteria are met. The supporting information must show:

(1) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(2) Measures taken by the carrier to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other then the carrier.

(3) Insofar as is known by the carrier, the extent to which the information has been disclosed, or otherwise become available, to persons other than the carrier, and why such disclosure or availability does not compromise the confidential nature of the information.

(4) If the carrier asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(5) If the carrier asserts that disclosure would be likely to impair protectable government interests, what the effects of disclosure are likely to be and why disclosure is likely to impair such interests.

(d) *When requests are due.*

(1) Requests for an exemption under this section may be made at any time during the year. However, a request will be deemed applicable to only those reports due on or after the date the request is received. Requests received

after a report's due date will only be considered for the following year's report.

(2) A request will be deemed received on the date the request is physically received or, if it is sent by mail, on the date it is postmarked.

(3) BTS will only allow a late request if there are extenuating circumstances and the carrier gives adequate notice within a reasonable time of the extenuating circumstances.

(4) A carrier submitting a request relating to the annual report can also request that it cover the quarterly reports for the upcoming year. In this case BTS will decide both requests at the same time. Requests covering the quarterly reports must be received by the due date of the annual report which relates to the prior year. The table in paragraph (e) of this section summarizes report, request, and decision due dates.

(e) *Decision to grant or deny a request.*

(1) After each due date of each annual report specified in § 1420.1, BTS will publish a notice in the **Federal Register** requesting comments on any requests received under this section that are valid and pending.

(2) A request will be granted only if it provides all of the supporting information required in paragraph (c) of this section and if the supporting information is sufficient to establish that information in the carrier's report meets the criteria in paragraph (b) of this section.

(3) If the carrier fails to comply with the timing requirements of paragraph (d) of this section, the claim for confidentiality will be waived unless BTS is notified of extenuating circumstances before the information is disclosed to the public and BTS finds that the extenuating circumstances warrant consideration of the claim.

(4) BTS will grant or deny each request no later than 90 days after the request's due date as defined in paragraph (d) of this section. The decision by BTS shall be administratively final. The table below summarizes report, request, and decision due dates.

Report	Report due	Request due	Decision due
Annual Form M	March 31	March 31	June 30
First Quarter Form QFR	April 30	March 31	June 30
Second Quarter Form QFR	July 31	March 31	June 30
Third Quarter Form QFR	October 31	March 31	June 30
Fourth Quarter Form QFR	January 31	March 31	June 30

(5) If a request is granted, BTS will notify carrier of that decision and of any appropriate limitations.

(6) If a request for confidentiality is denied, BTS will notify the carrier of that decision and that the information will be made available to the public not less than ten working days after the carrier has received notice of the denial. The notice will specify the reasons for denying the request.

(f) *Pendency.* A request is deemed pending from the date it is received by BTS until it is granted or denied by BTS. BTS will not release publicly, unless otherwise required by law, any report for which a valid request for an exemption from public release is pending.

(g) *Period of exemptions.* If a request for an exemption under this section is granted, BTS will not publicly release the reports covered by the granted exemption, unless otherwise required by law, for a period of three years from the report's due date.

(h) *Modification of a decision to grant a request.* If a request is granted it remains in effect in accordance with its terms, unless modified by a later finding that the decision was clearly erroneous. If BTS believes such a finding should be made, BTS will notify the requesting carrier in writing of the reasons for the modification and that the carrier's report will be made available to the public in not less than ten working days from the date of receipt of notice under this paragraph. The carrier may seek reconsideration of the modification.

9. Section 1420.10 is added to read as follows:

§ 1420.10 Public release of motor carrier of property data.

(a) *In general.* Unless other provided in this section, the data contained in a report filed under § 1420.1 shall be made publicly available, but no sooner than the due date for the report.

(b) *Exceptions relating to exemptions from public release.*

(1) If a request for an exemption from public release is pending under § 1420.9, BTS will not publicly release the reports covered by the request until at least the time that a decision to grant or deny the request is made.

(2) If a carrier is granted an exemption from public release under § 1420.9, BTS will not publicly release the reports covered by the granted exemption for a period of three years from the report's due date.

(c) *Other exceptions.* Notwithstanding any other provision of this part, information may be released:

(1) If the data are included in aggregate industry statistics that do not identify the individual carrier;

(2) To other components of the Department of Transportation for their internal use only;

(3) If required by law;

(4) With the consent of the carrier filing the report; or

(5) To contractors, if necessary for the performance of a contract with BTS.

10. Section 1420.6 is added to read as follows:

§ 1420.6. Address.

The following address must be used by motor carriers when submitting a report, requesting an exemption from filing a report, or requesting an exemption from public release of a report: Bureau of Transportation Statistics, U.S. Department of Transportation, K–27, 400 Seventh St., SW., Washington, DC 20590. This address may also be used for general correspondence regarding the data collection program described in this section.

Ashish Sen,

Director, Bureau of Transportation Statistics.

[FR Doc. 99–6849 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–FE–P

Proposed Rules

Federal Register
Vol. 64, No. 55
Tuesday, March 23, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Expansion and Continuation of Thrift Savings Plan Eligibility

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comment.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board proposes to reorganize and amend the regulations on continuation of Thrift Savings Plan (TSP) eligibility. The reorganization eliminates obsolete and redundant provisions. The amendments codify a new Thrift Savings Plan loan policy for employees returning to civilian service pursuant to the Uniformed Services Employment and Reemployment Rights Act, codify current TSP procedures governing participation by judges of the Courts of Federal Claims and Veterans Appeals, and otherwise update the terms used in this regulation to correspond with the terms used throughout the Board's other regulations.

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

ADDRESSES: Comments may be sent to: Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942–1662.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (Board) administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

Analysis

FERSA created the Federal Employees' Retirement System (FERS), and required the establishment of TSP accounts for ''employees and Members'' covered by FERS. *See* FERSA section 101(a), 100 Stat. at 541–44, codified as amended at 5 U.S.C. 8432. For purposes of FERS participation, ''employee'' and ''Member'' were defined at FERSA section 101(a), 100 Stat. at 517–20, codified as amended at 5 U.S.C. 8401(11) and (20). Voluntary TSP participation was also authorized for ''employees and Members'' covered under the Civil Service Retirement System (CSRS). *See* FERSA section 206(a)(1), 100 Stat. at 593–4, codified as amended at 5 U.S.C. 8351. FERSA also permitted TSP participation by various other specifically named groups, such as employees covered under the Foreign Service retirement plan. However, only individuals so authorized by FERSA could participate in the TSP.

From time to time since the passage of FERSA, Congress has expanded FERS participation and TSP eligibility to other groups of employees. Congress has also permitted certain groups of employees to maintain CSRS and FERS coverage after leaving Federal employment, and permitted them to retain their TSP eligibility. In addition, Congress has extended TSP participation to Supreme Court justices, Federal District Court judges, bankruptcy judges, and United States magistrates even though they are not covered by CSRS or FERS.

The Board created 5 CFR part 1620 to describe the rules for TSP participation by these individuals. Part 1620 consists of nine subparts which were added to govern TSP participation by different groups of employees as TSP eligibility was extended to them. Because part 1620 was written incrementally, it contains duplication, such as numerous definition sections. Various subparts also restate general TSP principles found elsewhere in the Board's regulations, and describe deadlines for actions which have passed. This proposed rule eliminates those obsolete and redundant provisions.

Removed Subparts A, D, and I

Section 101(a) of the Continuing Appropriations, Fiscal Year 1987, Pub. L. 99–591, section 110(a), 100 Stat. 3341, 3341–8, permitted food service employees of the House of Representatives who transferred from Federal employment to employment with a private contractor to retain Federal retirement system coverage and their TSP eligibility. On July 14, 1987, the Board published an interim rule with request for comments in the **Federal Register** (52 FR 28293) to implement that provision. The Board received no comments on the interim rule, which was codified at 5 CFR part 1620, subpart A.

The Federal Employees' Retirement System, Technical Corrections [Act of 1988], Pub. L. 100–238, title I, 101 Stat. 1744, 1744–67, permitted TSP participation by individuals covered by CSRS as a result of the provision of law described in 5 U.S.C. 8347(o). Under section 8347(o), individuals who were employed by an international organization before October 1, 1988, while not employed by the Federal Government, are nevertheless covered by CSRS. On March 28, 1988, the Board published an interim rule with request for comments in the **Federal Register** (53 FR 10038) to implement the above-mentioned provision. The Board received no comment on this interim rule, which was codified at 5 CFR part 1620, subpart D.

Section 101 of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Control Board Act), Pub. L. 104–8, 109 Stat. 97, 100, established the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board) as an entity within the Government of the District of Columbia. Under the Control Board Act, certain persons who separated from Federal employment and who became employed by the Control Board could maintain their Federal retirement system coverage and TSP eligibility. On January 29, 1996, the Board published an interim rule with request for comments in the **Federal Register** (61 FR 2872), governing TSP participation by CSRS and FERS employees of the Control Board. That interim rule was codified at subpart I. On April 26, 1996, the Control Board Act was amended by section 153 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, 110 Stat. 1321, to permit a broader group of Control Board employees to elect CSRS or FERS

coverage and thereby TSP eligibility. On October 25, 1996, the Board published in the **Federal Register** (61 FR 55201) an interim rule with request for comments, amending subpart I to reflect the 1996 amendments. The Board received no comment on either rule.

Current subparts A, D, and I are removed by this proposed rule because they are now unnecessary. The deadline for food service employees to elect Federal retirement coverage passed in 1987 and Board regulations no longer need to address the requirements of that election. The remaining provisions of subpart A, which describe the rules for making TSP contributions, are unnecessary because food service employees participate in the TSP under the same rules that apply to all Federal employees.

With respect to subpart D, sections 1620.52 and 1620.53 describe the initial election period for employees covered by the subpart and are no longer needed because the election period has passed. The remainder of subpart D is unnecessary because it restates general TSP rules found elsewhere in the TSP regulations.

Finally, with respect to subpart I, CSRS and FERS employees of the D.C. Control Board also participate in the TSP under conventional rules. Although certain employees of the D.C. Control Board are eligible for CSRS or FERS coverage while others are not, this is a matter within the jurisdiction of the United States Office of Personnel Management, and Board regulations need not address the particulars of that eligibility.

New Subpart A

The proposed rule creates a new subpart A to explain the rules that generally apply to all TSP participants covered by part 1620. Section 1620.1 describes who is covered by part 1620 and explains that part 1620 must be read in conjunction with the Board's other regulations at 5 CFR chapter VI. Currently, each subpart of part 1620 contains its own definition section, which results in unnecessary duplication. Section 1620.2 consolidates the definitions, to the extent possible, and conforms the terms used in this part to those used throughout the remainder of 5 CFR chapter VI. Section 1620.3 states the general rule, currently repeated throughout part 1620, that an employing agency must timely notify an employee of his or her TSP eligibility and the applicability of part 1620.

New Subpart B

The Federal Employees' Retirement System, Technical Corrections [Act of 1988], Pub. L. 100–238, tit. I, 101 Stat. 1744, 1744–67, permitted the continuation of CSRS and FERS retirement coverage, and resulting TSP eligibility, for three separate groups of Federal employees: (1) those transferred or otherwise assigned to a cooperative extension service (CES), as defined at 7 U.S.C. 3103(5); (2) those who enter on approved leave-without-pay status to serve as full-time officers or employees of an organization composed primarily of ''employees'' as defined at 5 U.S.C. 8331(1) or 8401(11); and (3) those assigned on an approved leave-without-pay status to a State or local government under the Intergovernmental Personnel Act (IPA), 5 U.S.C. chapter 33, subchapter VI.

On March 28, 1988, the Board published an interim rule with request for comments in the **Federal Register** (53 FR 10038) to implement these provisions of the 1988 Act, which was codified at 5 CFR part 1620, subparts B and C. Subpart B addresses CES employees, while subpart C addresses union and IPA employees. On May 18, 1988, the Board published in the **Federal Register** (53 FR 17685) an amendment to the March 28, 1988, interim rule which extended the period during which union employees could elect TSP participation. The Board received no comment on either rule.

The proposed rule condenses subparts B and C into a new subpart B because, with few exceptions, the same rules apply to TSP participation by union, IPA, and CES employees. Some provisions have been moved to proposed subpart A, i.e., the definitions (sections 1620.11 and 1620.31), the employee notice provisions (sections 1620.18(b) and 1620.39), and the reference to other TSP regulations (sections 1620.19 and 1620.40). Others have been eliminated because they only restated general TSP principles found elsewhere in TSP regulations, i.e., the deadline for making employee contributions (sections 1620.14 and 1620.33) and the computation of basic pay (sections 1620.16 and 1620.35). Sections 1620.17, 1620.36, and 1620.37, which describe retroactive TSP contributions, are combined and rewritten in proposed section 1620.13 to omit material discussed in the error correction regulations at 5 CFR part 1605.

New Subpart C

Section 401(a) of the Federal Employees Health Benefits Amendments Act of 1988, 5 U.S.C. 8440a, permits justices and judges of the United States, as defined at 28 U.S.C. 451, to participate in the TSP. Similarly, section 7(a) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, 5 U.S.C. 8440b, permits bankruptcy judges and United States magistrates to participate in the TSP. On August 10, 1989, the Board published an interim rule with request for comments in the **Federal Register** (54 FR 32785) to implement sections 8440a and 8440b. The August 10 interim rule was codified at subparts E and F of part 1620. On January 13, 1994, the Board published an interim rule with request for comments in the **Federal Register** (59 FR 1889) to implement an amendment made to 5 U.S.C. 8440a and 8440b by the Thrift Savings Plan Technical Amendments Act of 1990, Pub. L. 101–335, § 3(b), 101 Stat. 335, 320–21. The 1990 amendment lifted investment restrictions that had required participants to invest their TSP accounts solely in the Government Securities Investment (G) Fund. On November 18, 1996, the Board published an interim rule with request for comments in the **Federal Register** which, *inter alia,* conformed the definitions of basic pay found at sections 1620.72 and 1620.83 to the definition of that term contained in the Thrift Savings Plan Act of 1996, 5 U.S.C. 8401(4). The Board received no comments on the foregoing publications.

To the extent it is not repeated elsewhere in Board regulations, the information in current subparts E and F should be retained because justices and judges of the United States, United States magistrates, and bankruptcy judges participate with special rules for contributions, withdrawals, and spousal rights. Therefore, this proposed rule condenses subparts E and F into a new subpart C.

Proposed subpart C also contains a discussion of two groups of TSP participants not mentioned in subparts E and F. Section 306(d)(1) of the Judicial Improvements Act of 1990, 5 U.S.C. 8440c, permits judges of the United States Court of Federal Claims to participate in the TSP. Section 5(a)(1) of the United States Court of Veterans Appeals, Amendments [Act of 1991], 5 U.S.C. 8440d, permits judges of the Court of Veterans Appeals to participate in the TSP. The Board did not publish regulations in part 1620 to implement sections 8440c and 8440d. However, because these judges participate in the TSP under rules similar to those affecting other judges, it would be helpful to discuss them also in the new subpart C.

Proposed subpart C also contains a new statement of law. Current sections

1620.73 and 1620.84, which deal with TSP withdrawals, are condensed into proposed section 1620.22. However, after the current regulations were written, legislation authorized in-service withdrawals. Therefore, proposed section 1620.22 explains in-service as well as post-employment withdrawal eligibility. Proposed section 1620.22 does not discuss the withdrawals themselves, or the procedures for obtaining them, because those matters are discussed at length in the Board's withdrawal regulations at 5 CFR part 1650.

Proposed subpart C also condenses several provisions of the Board's current regulations to eliminate redundant and obsolete statements. Proposed section 1620.21 explains the TSP contribution rules currently found in sections 1620.72 and 1620.83, while proposed section 1620.23 explains the spousal rights currently discussed in sections 1620.74 and 1620.85.

The remaining provisions of subparts E and F can be eliminated. Subpart C omits the definitions currently at sections 1620.71 and 1620.81. If the meaning of any word is not apparent from the text of the regulation, it is defined in proposed subpart A. Proposed subpart C also does not describe the circumstances under which a judge's annuity will be offset, presently set forth in sections 1620.72(c) and 1620.75, because judges' annuities are administered by the Administrative Office of the United States Courts, not the TSP. Finally, section 1620.82 is eliminated. The initial election period established under 5 U.S.C. 8440a has passed; therefore section 1620.82(a) is obsolete. Elections occurring outside the initial election period must follow the rules found at 5 CFR part 1600; therefore, section 1620.82(b) is also unnecessary.

New Subpart D

The Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (1990 Portability Act), Pub. L. 101–508, 104 Stat. 1388, 1388–335 to 1388–341 (codified largely at 5 U.S.C. 8347(q)(1) and 8461(n)(1)), permitted CSRS and FERS employees of the Department of Defense and the United States Coast Guard who moved on or after January 1, 1987, to a Nonappropriated Fund (NAF) Instrumentality of the Department of Defense (DOD) to participate in the TSP if they elected to maintain their CSRS or FERS retirement coverage after the move. On June 10, 1991, the Board published an interim rule with request for comments in the **Federal Register** (56 FR 26,722) implementing the 1990 Portability Act as it pertained to the TSP. The Board received no comments on the 1991 interim rule, which was codified at 5 CFR part 1620, subpart G.

Section 1043 of the 1996 Defense Authorization Act for Fiscal Year 1996 (Defense Authorization Act), Pub. L. 104–106, 110 Stat. 186, 434–439, amended the 1990 Portability Act to allow a broader group of employees to participate in the TSP, both prospectively and retroactively. On August 9, 1996, the Board published an interim rule with request for comments in the **Federal Register** (61 FR 41485) to implement the Defense Authorization Act amendments.

The Board received a comment from one Federal agency objecting to three provisions of the 1996 interim rule, sections 1620.93(b), 1620.93(c) and 1620.94(a). After consideration thereof, the Board determined to promulgate the interim rule as a final rule. The provisions are renumbered as 1620.33(b), 1620.33(c) and 1620.34(a), respectively, in the proposed rule.

Proposed subpart D does not change the substance of current subpart G; rather, it renumbers and reorganizes its provisions. Proposed subpart D also does not contain certain provisions that have been moved to proposed subpart A, i.e., the definitions of *basic pay* and *retirement coverage* (1620.91), the employee notice provision (1620.98), and the reference to other TSP regulations (1620.99). Proposed subpart D also omits as unnecessary several provisions of the current NAF instrumentality regulations. First, current section 1620.92(a)(2) and (b) repeat the TSP contribution election rules found at 5 CFR 1600; that repetition is removed from the proposed rule and replaced with a reference to part 1600. Second, current section 1620.93(b) provides a detailed restatement of the TSP error correction procedures found at 5 CFR 1605.2(c); proposed section 1620.33 replaces that recitation with a reference to section 1605.2(c). Finally, current section 1620.95, which explains that the NAF instrumentality must submit agency contributions to the TSP record keeper, is also omitted as an unnecessary re-statement of the process described at 5 CFR part 1600.

New Subpart E

Section 4 of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 5 U.S.C. 8432b, describes the rights to TSP benefits afforded to an employee who is restored from leave-without-pay status or reemployed in the civilian service under 38 U.S.C. chapter 43 following a release from military service, discharge from hospitalization related to that service, or other similar event. On April 21, 1995, the Board published an interim rule with request for comments in the **Federal Register** (60 FR 19990), which was codified at 5 CFR part 1620 subpart H.

On August 20, 1996, the Small Business Job Protection Act of 1996, Pub. L. 104–188, 110 Stat. 1755, added section 414(u) to the Internal Revenue Code. Section 414(u) provides that retroactive contributions made by a reemployed veteran pursuant to USERRA are not subject to the elective deferral limit at 26 U.S.C. 402(g) for the year in which the contributions are made. On April 14, 1997, the Board published a final rule in the **Federal Register** (62 FR 18234) which removed a reference in subpart H to the elective deferral limit. The April 14 rule also adopted the amended subpart H as final.

This proposed rule makes one substantive change to current subpart H: under new TSP policy, a TSP participant whose loan was closed by taxable distribution due to a USERRA-related absence will be provided an opportunity to reinstate the TSP loan upon reemployment or upon return to Federal employment if the participant was on approved leave-without-pay. An employee will be given one year from the date of his or her reemployment to request reinstatement of the loan. The TSP record keeper will inform the employee if reinstatement is feasible, i.e, whether loan repayment can be accomplished within the time limits described in 5 CFR 1655.13(a)(5), and will not violate the restriction set forth in 5 CFR 1655.4 on the number of outstanding TSP loans. If reinstatement is not feasible, the participant will be given a one-time opportunity to repay the loan in full in the amount which, in effect, reverses the taxable distribution. The TSP record keeper will inform the employee of the amount he or she must repay, and the employee must provide the funds in a single payment to the TSP record keeper within 90 days of that notice.

The proposed rule also renumbers and reorganizes the substance of current subpart H and places it in a new sub part E. Proposed subpart E does not contain the definition of *recordkeeper,* currently at 1620.101, because that term is defined in proposed subpart A. In addition, *basic pay* and *retroactive period* have been redefined to be consistent with the Board's other regulations. Section 1620.103 is also omitted because lost earnings are discussed at 5 CFR part 1606.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduc tion Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on State, local, and tribal governments, and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1620

Employment benefit plans, Government employees, Pensions, Retirement.

Dated: March 12, 1999.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Board proposes to revise 5 CFR Part 1620, to read as follows:

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

Subpart A—General

Sec.
1620.1 Application.
1620.2 Definitions.
1620.3 Contributions.
1620.4 Notices.

Subpart B—Cooperative Extension Service, Union, and Intergovernmental Personnel Act Employees

1620.10 Definition.
1620.11 Scope.
1620.12 Employing authority contributions.
1620.13 Retroactive contributions.
1620.14 Payment to the record keeper.

Subpart C—Article III Justices and Judges; Bankruptcy Judges and U.S. Magistrates; and Judges of the Courts of Federal Claims and Veterans Appeals

1620.20 Scope.
1620.21 Contributions.
1620.22 Withdrawals.
1620.23 Spousal rights.

Subpart D—Nonappropriated Fund Employees

1620.30 Scope.
1620.31 Definition.
1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.
1620.33 Employees who move to a NAF instrumentality before August 10, 1996, but after December 31, 1965.
1620.34 Employees who move from a NAF instrumentality to a Federal Government agency.
1620.35 Loan payments.
1620.36 Transmission of information.

Subpart E—USERRA-Covered Military Service

1620.40 Scope.
1620.41 Definitions.
1620.42 Processing TSP contribution elections.
1620.43 Agency payments to record keeper; agency ultimately responsible.
1620.44 Restoring forfeited agency automatic (1%) contributions.
1620.45 Restoring post-employment withdrawals and reversing taxable distributions.
1620.46 Agency responsibilities.

Authority: 5 U.S.C. 8474(b)(5) and (c)(1).

Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8).

Subpart D also issued under sec. 1043(b), Pub. L. 104–106, 110 Stat. 186, 434–435; and sec. 7202(m)(2), Pub. L. 101–508, 104 Stat. 1388.

Subpart E also issued under 5 U.S.C. 8432b(i).

Subpart A—General

§ 1620.1 Application.

The Federal Employees' Retirement System Act of 1986 (codified as amended largely at 5 U.S.C. 8351 and 8401 through 8479) originally limited TSP eligibility to specifically named groups of employees. On various occasions, Congress has since expanded TSP eligibility to other groups. Depending on the circumstances, that subsequent legislation requires retroactive contributions, waives open season rules, or provides other special features. Where necessary, this part describes those special features. The employees and employing agencies covered by this part are also governed by the other regulations in 5 CFR chapter VI to the extent that they do not conflict with the regulations of this part.

§ 1620.2 Definitions.

As used in this part:

Account balance means the nonforfeitable valued account balance of a TSP participant as of the most recent month-end.

Basic pay means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C).

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS or an equivalent retirement system, including employees authorized to contribute to the TSP under 5 U.S.C. 8351.

Election period means the last calendar month of a TSP open season and is the earliest period in which an election to make or change a TSP contribution election can become effective.

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8351(a), 8432(a), or 8440a through 8440d.

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3), and agency matching contributions under 5 U.S.C. 8432(c)(2).

Employing agency means the organization that employs an individual described at § 1620.1 as being eligible to contribute to the TSP and that has authority to make personnel compensation decisions for such employee.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B).

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, and any equivalent Federal Government retirement system.

FERS employee or *FERS participant* means any employee or participant covered by FERS.

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

Individual account means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

In-service withdrawal means an age-based or financial hardship withdrawal

from the TSP obtained by a participant before separation from Government employment.

Investment fund means either the G Fund, the F Fund, or the C Fund, and any other TSP investment funds created after December 27, 1996.

Monthly processing cycle means the process, beginning on the evening of the fourth business day of the month, by which the TSP record keeper allocates the amount of earnings to be credited to participant accounts in the TSP, implements interfund transfer requests, and authorizes disbursements from the TSP.

Open season means the period during which employees may choose to begin making contributions to the TSP, to change or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the TSP, or to allocate prospective contributions to the TSP among the investment funds.

Plan participant or participant means any person with an account in the TSP, or who would have an account in the TSP but for an employing agency error.

Post-employment withdrawal means a withdrawal from the TSP obtained by a participant who has separated from Government employment.

Separation from Government employment means the cessation of employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for 31 or more full calendar days.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms on which the TSP requests spouse information including a spouse from whom the participant is legally separated, and includes a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live.

Thrift Savings Fund means the Fund described in 5 U.S.C. 8437.

Thrift Savings Plan, TSP, or *Plan* means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan (TSP) contribution election means a request by an employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period, or to change the allocation of future TSP contributions among the investment funds, and made effective pursuant to 5 CFR part 1600.

Thrift Savings Plan Service Computation Date means the date, actual or constructed, that includes all ''service'' as defined at 5 CFR 1603.1.

Thrift Savings Plan Service Office means the office established by the Board to service participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

§ 1620.3 Contributions.

The employing agency is responsible for transmitting to the Board's record keeper, in accordance with Board procedures, any employee and employer contributions that are required by this part.

§ 1620.4 Notices.

An employing agency must notify affected employees of the application of this part as soon as practicable.

Subpart B—Cooperative Extension Service, Union, and Intergovernmental Personnel Act Employees

§ 1620.10 Definition.

As used in this subpart, *employing authority* means the entity that employs an individual described in § 1620.11 and which has the authority to make personnel compensation decisions for such employee.

§ 1620.11 Scope.

This subpart applies to any individual participating in CSRS or FERS who:

(a) Has been appointed or otherwise assigned to one of the cooperative extension services, as defined in 7 U.S.C. 3103(5);

(b) Has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by 5 U.S.C. 8331(1) and 8401(11); or

(c) Has been assigned, on an approved leave-without-pay basis, from a Federal agency to a state or local government under 5 U.S.C. chapter 33, subchapter VI.

§ 1620.12 Employing authority contributions.

The employing authority, at its sole discretion, may choose to make employer contributions under 5 U.S.C. 8432(c) for employees who are covered under FERS. Such contributions may be made for any period of eligible service after January 1, 1984, provided that the employing agency must treat all its employees who are eligible to receive employer contributions in the same manner. The employing authority can only commence or terminate employer contributions during an open season and must provide all affected employees with notice of a decision to commence or terminate such contributions at least 45 days before the beginning of the applicable election period. The employing authority may not contribute to the TSP on behalf of CSRS employees.

§ 1620.13 Retroactive contributions.

(a) An employing authority can make retroactive employer contributions on behalf of FERS employees described in this subpart, but cannot duplicate employer contributions already made to the TSP.

(b) An employing authority making retroactive employing agency contributions on behalf of a FERS employee described in § 1620.12 must continue those contributions (but only to the extent they relate to service with the employing authority) if the employee returns to his or her agency of record or is transferred to another Federal agency without a break in service.

(c) CSRS and FERS employees covered by this subpart can make retroactive employee contributions relating to periods of service described in § 1620.12, unless they already have been given the opportunity to make contributions for these periods of service.

§ 1620.14 Payment to the record keeper.

(a) The employing authority of a cooperative extension service employee (described at § 1620.11(a)) is responsible for transmitting employer and employee contributions to the TSP record keeper.

(b) The employing authority of a union employee or an Intergovernmental Personnel Act employee (described at § 1620.11(b) and (c), respectively) is responsible for transmitting employer and employee contributions to the employee's Federal agency of record. Employee contributions will be deducted from the employee's actual pay. The employee's agency of record is responsible for transmitting the employer and employee contributions to the TSP record keeper in accordance with Board procedures. The employee's election form (TSP–1) will be filed in the employee's official personnel folder or other similar file maintained by the employing authority.

Subpart C—Article III Justices and Judges; Bankruptcy Judges and U.S. Magistrates; and Judges of the Courts of Federal Claims and Veterans Appeals

§ 1620.20 Scope.

(a) This subpart applies to:

(1) A justice or judge of the United States as defined in 28 U.S.C. 451;

(2) A bankruptcy judge appointed under 28 U.S.C. 152 or a United States magistrate appointed under 28 U.S.C. 631 who has chosen to receive a judges' annuity described at 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Pub. L. 100–659, 102 Stat. 3910–3921;

(3) A judge of the United States Court of Federal Claims appointed under 28 U.S.C. 171 whose retirement is covered by 28 U.S.C. 178; and

(4) A judge of the Court of Veterans Appeals appointed under 38 U.S.C. 7253.

(b) This subpart does not apply to a bankruptcy judge or a United States magistrate who has not chosen a judges' annuity, or to a judge of the United States Court of Federal Claims who is not covered by 28 U.S.C. 178. Those individuals may participate in the TSP only if they are otherwise covered by CSRS or FERS.

§ 1620.21 Contributions.

(a) An individual covered under this subpart can contribute up to 5 percent of basic pay per pay period to the TSP, and, unless stated otherwise in this subpart, he or she is covered by the same rules and regulations that apply to a CSRS participant in the TSP.

(b) The following amounts are not basic pay and no TSP contributions can be made from them:

(1) An annuity or salary received by a justice or judge of the United States (as defined in 28 U.S.C. 451) who is retired under 28 U.S.C. 371(a) or (b), or 372(a);

(2) Amounts received by a bankruptcy judge or a United States magistrate under a judges' annuity described at 28 U.S.C. 377;

(3) An annuity or salary received by a judge of the United States Court of Federal Claims under 28 U.S.C. 178; and

(4) Retired pay received by a judge of the United States Court of Veterans Appeals under 38 U.S.C. 7296.

§ 1620.22 Withdrawals.

(a) *Post-employment withdrawal.* An individual covered under this subpart can make a post-employment withdrawal election described at 5 U.S.C. 8433(b):

(1) Upon separation from Government employment.

(2) In addition to the circumstance described in paragraph (a)(1) of this section, a post-employment withdrawal election can be made by:

(i) A justice or judge of the United States (as defined in 28 U.S.C. 451) who retires under 28 U.S.C. 317(a) or (b) or 372(a);

(ii) A bankruptcy judge or a United States magistrate receiving a judges' annuity under 28 U.S.C. 377;

(iii) A judge of the United States Court of Federal Claims receiving an annuity or salary under 28 U.S.C. 178; and

(iv) A judge of the United States Court of Veterans Appeals receiving retired pay under 38 U.S.C. 7296.

(b) *In-service withdrawals.* An individual covered under this subpart can request an in-service withdrawal described at 5 U.S.C. 8433(h) if he or she:

(1) Has not separated from Government employment; and

(2) Is not receiving retired pay as described in paragraph (a)(2) of this section.

§ 1620.23 Spousal rights.

(a) The current spouse of a justice or judge of the United States (as defined in 28 U.S.C. 451), or of a Court of Veterans Appeals judge, possesses the rights described at 5 U.S.C. 8351(b)(5).

(b) A current or former spouse of a bankruptcy judge, a United States magistrate, or a judge of the United States Court of Federal Claims, possesses the rights described at 5 U.S.C. 8435 and 8467 if the judge or magistrate is covered under this subpart.

Subpart D—Nonappropriated Fund Employees

§ 1620.30 Scope.

This subpart applies to any employee of a Nonappropriated Fund (NAF) instrumentality of the Department of Defense (DOD) or the U.S. Coast Guard who elects to be covered by CSRS or FERS and to any employee in a CSRS- or FERS-covered position who elects to be covered by a retirement plan established for employees of a NAF instrumentality pursuant to the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Pub. L. 101–508, 104 Stat. 1388, 1388–335 to 1388–341, as amended (codified largely at 5 U.S.C. 8347(q) and 8461(n)).

§ 1620.31 Definition.

As used in this subpart, move means moving from a position covered by CSRS or FERS to a NAF instrumentality of the DOD or Coast Guard, or vice versa, without a break in service of more than 1 year.

§ 1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.

Any employee who moves from a CSRS- or FERS-covered position to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS, will be eligible to contribute to the TSP as determined in accordance with 5 CFR part 1600.

§ 1620.33 Employees who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965.

(a) *Future TSP contributions*—(1) *Employee contributions.* An employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of that move may elect to make any future contributions to the TSP in accordance with 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, within 30 days of the date of his or her election to be covered by CSRS or FERS. Such contributions will begin being deducted from the employee's pay no later than the pay period following the election to contribute to the TSP. Any TSP contribution election which may have been in effect at the time of the employee's move will not be effective for any future contributions.

(2) *Employer contributions.* If an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, elects to be covered by FERS:

(i) The NAF instrumentality must contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(1), beginning no later than the pay period following the employee's election to be covered by FERS; and

(ii) If the employee elects to make contributions to the TSP pursuant to paragraph (a)(1) of this section, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(2), beginning at the same time as the employee's contributions are made pursuant to paragraph (a)(l) of this section.

(b) *Retroactive TSP contributions.* (1) Without regard to any election to contribute to the TSP under paragraph (a)(l) of this section, the NAF instrumentality will take the following actions with respect to an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be

covered by CSRS or FERS as of the date of the move:

(i) *Agency automatic (1%) makeup contributions.* The NAF instrumentality must, within 30 days of the date of the employee's election to be covered by FERS, contribute to the Thrift Savings Fund an amount representing the agency automatic (1%) contribution for all pay periods during which the employee would have been eligible to receive the agency automatic (1%) contribution under 5 U.S.C. 8432, beginning with the date of the move and ending with the date that agency automatic (1%) contributions begin under paragraph (a)(2) of this section. Lost earnings will not be paid on these contributions unless they are not made by the NAF instrumentality within the time frames required by these regulations.

(ii) *Employee makeup contributions.* (A) Within 60 days of the election to be covered by FERS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by FERS, may make an election regarding employee makeup contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions which the employee would have been eligible to make under 5 U.S.C. 8432 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the date that agency automatic (1%) contributions begin under paragraph (a)(2) of this section.

(B) Within 60 days of the election to be covered under CSRS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS, may make an election regarding makeup contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions that the employee would have been eligible to make under 5 U.S.C. 8351 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the pay period following the date the election to be covered by CSRS is made.

(C) Deductions made from the employee's pay pursuant to an employee's election under paragraph (b)(1)(ii) (A) or (B) of this section, as appropriate, must be made according to a schedule that meets the requirements of 5 CFR 1505.2(c). The payment schedule must begin no later than the pay period following the date the employee elects the schedule.

(iii) Agency matching makeup contributions. The NAF instrumentality must pay to the Thrift Savings Fund any matching contributions attributable to employee contributions made under paragraph (b)(1)(ii)(A) of this section which the NAF instrumentality would have been required to make under 5 U.S.C. 8432(c), at the same time that those employee contributions are contributed to the Fund.

(2) Makeup contributions must be reported for investment by the NAF instrumentality when contributed, according to the employee's election for current TSP contributions. If the employee is not making current contributions, the retroactive contributions must be invested according to an election form (TSP–1–NAF) filed specifically for that purpose.

(c) *Noneligible employees.* An employee who is covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement system coverage must be removed from the TSP as required by the regulations at 5 CFR part 1605.

(d) *Elections.* If a TSP election was made by an employee of a NAF instrumentality who elected to be covered by CSRS or FERS before August 10, 1996, and the election was properly implemented by the NAF instrumentality because it was valid under then-effective regulations, the election is effective under the regulations in this subpart.

§ 1620.34 Employees who move from a NAF instrumentality to a Federal Government agency.

(a) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement coverage must be removed from the TSP as required by the regulations at 5 CFR part 1605.

(b) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by CSRS or FERS will become eligible to participate in the TSP as determined in accordance with 5 CFR part 1600.

§ 1620.35 Loan payments.

NAF instrumentalities must deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the record keeper in accordance with 5 CFR part 1655 and Board procedures. Loan payments may not be deducted and transmitted for employees who elect to be covered by the NAF retirement system. Such employees will be considered to have separated from Government service and must prepay their loans or the TSP will declare the loan to be a taxable distribution.

§ 1620.36 Transmission of information.

Any employee who moves to a NAF instrumentality must be reported by the losing Federal Government agency to the TSP record keeper as having transferred to a NAF instrumentality of the DOD or Coast Guard rather than as having separated from Government service. If the employee subsequently elects not to be covered by CSRS or FERS, the NAF instrumentality must submit an Employee Data Record to report the employee as having separated from Federal Government service as of the date of the move.

Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)—Covered Military Service

§ 1620.40 Scope.

To be covered by this subpart, an employee must have:

(a) Separated from Federal civilian service or entered leave-without-pay status in order to perform military service; and

(b) Become eligible to seek reemployment or restoration to duty by virtue of a release from military service, discharge from hospitalization, or other similar event that occurred on or after August 2, 1990; and

(c) Been reemployed in, or restored to, a position covered by CSRS or FERS pursuant to the provisions of 38 U.S.C. chapter 43.

§ 1620.41 Definitions.

As used in this subpart:

Basic pay means basic pay as defined in § 1620.2, except for the portion of the retroactive period when an employee did not receive a Federal salary. In that case, basic pay is the rate of pay that would have been payable to the employee had he or she remained continuously employed in the position last held before separating (or entering leave-without-pay status) to perform military service.

Current contributions means those contributions that are made

prospectively for any pay period after the employee has been reemployed.

Leave without pay or *LWOP* means a temporary nonpay status and absence from duty (including military furlough) to perform military service.

Reemployed or *reemployment* means reemployed in (or restored from a nonpay status to) a position pursuant to 38 U.S.C. chapter 43, which is subject to 5 U.S.C. chapter 84 or which entitles the employee to contribute to the TSP pursuant to 5 U.S.C. 8351.

Retroactive period means the period for which an employee is entitled to make up missed employee contributions and to receive retroactive agency contributions.

Retroactive period beginning date means, for an employee who was eligible to contribute to the TSP when military service began, the date following the effective date of separation or, in the case of LWOP, the date the employee enters LWOP status. For an employee who was not eligible to make TSP contributions when military service began, the retroactive period begins on the first day of the first pay period in the election period during which the employee would have been eligible to make contributions had the employee remained in Federal civilian service.

Retroactive period ending date means the earlier of the following two dates: the date before the first day of the first election period during which a contribution election could have been made effective after reemployment, or the last day of the pay period before the pay period during which routine current contributions are begun after the employee is reemployed (or restored). If an employee who was making contributions when he or she separated elects not to make routine current contributions, the ending date of the retroactive period is the last day of the pay period during which the employee elects to terminate contributions.

Separation or *separated* means the period an employee was separated from Federal civilian service (or entered a leave-without-pay status) in order to perform military service.

§ 1620.42 Processing TSP contribution elections.

(a) *Current TSP contribution elections.* Immediately upon reemployment, an employee's agency will give an eligible employee the opportunity to submit a TSP election form (Form TSP–1) to make current contributions. The effective date of the current Form TSP–1 will be the first day of the first full pay period in the most recent TSP election period. If the employee is reemployed during a TSP Open Season but before the election period, he or she can also submit an election form that will become effective the first day of the first full pay period in the following election period.

(b) *Retroactive contribution elections.* (1) An employee has the following options for making retroactive contributions:

(i) If the employee had a valid contribution election form (Form TSP–1) on file when he or she separated, that election form will be reinstated for purposes of retroactive contributions.

(ii) Instead of making the contributions for the retroactive period under the reinstated contribution election form, the employee may submit a new election form for any Open Season that occurred during the retroactive period. However, the allocation election on each Form TSP–1 for the retroactive period must be the same as the allocation election on the current Form TSP–1.

(2) An employee who terminated contributions within two months before entering military service will be eligible to make a retroactive contribution election effective for the first Open Season that occurs after the effective date that the contributions were terminated. This election may be made even if the termination was made outside of an Open Season.

§ 1620.43 Agency payments to record keeper; agency ultimately responsible.

(a) *Agency making payments to record keeper.* The current employing agency always will be the agency responsible for making payments to the record keeper for all contributions (both employee and agency) and lost earnings, regardless of whether some of that expense is ultimately chargeable to a prior employing agency.

(b) *Agency ultimately chargeable with expense.* The agency ultimately chargeable with the expense of agency contributions and lost earnings attributable to the retroactive period is ordinarily the agency that reemployed the employee. However, if an employee changed agencies during the period between the date of reemployment and October 13, 1994, the employing agency as of October 13, 1994, is the agency ultimately chargeable with the expense.

(c) *Reimbursement by agency ultimately chargeable with expense.* If the agency that made the payments to the record keeper for agency contributions and lost earnings is not the agency ultimately chargeable for that expense, the agency that made the payments to the recordkeeper may, but is not required to, obtain reimbursement from the agency ultimately chargeable with the expense.

§ 1620.44 Restoring forfeited agency automatic (1%) contributions.

If an employee's agency automatic (1%) contributions were forfeited because the employee was not vested when he or she separated to perform military service, the employee must notify the employing agency that a forfeiture occurred. The employing agency will follow the procedure described in § 1620.47(d) to have those funds restored.

§ 1620.45 Restoring post-employment withdrawals and reversing taxable distributions.

(a) *Post-employment withdrawals.* Employees who received automatic cashouts because their account balances were $3,500 or less, or who were required to withdraw their TSP accounts before March 1995 because they were not eligible for retirement benefits when they separated, may elect to have the separation for military service treated as if it never occurred. These employees will be permitted to return amounts to the TSP that represent the full amount of the post-employment withdrawal.

(b) *Reversing taxable distributions.* An employee who separated or who entered into nonpay status to perform military service, and whose TSP loan was therefore declared a taxable distribution, may be eligible to have that distribution reversed.

(1) If the employee received a post-employment withdrawal when he or she separated to perform military service, he or she can have a taxable distribution reversed only if that withdrawal is returned under the procedures described in paragraph (a) of this section. If the employee is not eligible to or does not return the withdrawal, he or she cannot have the taxable distribution reversed.

(2) The taxable distribution can be reversed either by reinstating the TSP loan or by repaying the loan in full. TSP loan repayments can be reinstated only if the loan can be repaid within five years of its disbursement for non-residential loans and 15 years for residential loans; and if the employee will have no more than two loans outstanding, one of which can be a residential loan.

(c) *Process.* Eligible employees must notify the TSP record keeper of their intent to return the withdrawn funds and/or reverse a taxable distribution. This notification must be given within one year of reemployment and the employee must provide the TSP record

keeper with a copy of the SF–50, Notification of Personnel Action, indicating reemployment or reinstatement was made pursuant to 38 U.S.C. chapter 43, or a letter from his or her agency indicating reemployment or restoration pursuant to 38 U.S.C. chapter 43. If the participant is eligible to return a withdrawal and/or reverse a distribution, the TSP record keeper will:

(1) In the case of a request to return withdrawn funds, notify the employee of the amount of funds to be returned.

(2) In the case of a request to reverse a taxable distribution, reinstate the loan if permitted, or if not, inform the employee of the repayment amount for the loan.

(3) In the case of returned withdrawal and a repaid loan, inform the employee that both actions must be accomplished in the same transaction (i.e., one payment for both amounts).

(4) In all cases inform the employee that he or she must provide the funds in a single payment to the TSP record keeper within 90 days after the record keeper sends the employee the notice advising of the amount and procedures for repaying the loan or withdrawal. Repayment must be submitted in the form of a certified or cashier's check, a certified or treasurer's draft from a credit union, or a money order.

(d) *Earnings.* Employees will not receive retroactive earnings on any amounts returned to their accounts under this section.

§ 1620.46 Agency responsibilities.

(a) *General.* Each employing agency must establish procedures for implementing these regulations. These procedures must at a minimum require agency personnel to identify eligible employees and notify them of their options under these regulations and the time period within which these options must be exercised.

(b) *Agency records; procedure for reimbursement.* The agency that is making the payments to the record keeper for all contributions (both employee and agency) and lost earnings will obtain from prior employing agencies whatever information is necessary to make accurate payments. If a prior employing agency is ultimately chargeable under § 1620.43(b) for all or part of the expense of agency contributions and lost earnings, the agency making the payments to the record keeper will determine the procedure to follow in order to collect amounts owed to it by the agency ultimately chargeable with the expense.

(c) *Payment schedule; matching contributions report.* Agencies will, with the employee's consent, prepare a payment schedule for making retroactive employee contributions which will be consistent with the procedures established at 5 CFR part 1605 for the correction of employing agency errors.

(d) *Agency automatic (1%) contributions.* Employing agencies must calculate the agency automatic (1%) contributions for all reemployed (or restored) FERS employees, report those contributions to the record keeper, and submit lost earnings records to cover the retroactive period within 60 days of reemployment.

(e) *Forfeiture restoration.* When notified by an employee that a forfeiture of the agency automatic (1%) contributions occurred after the employee separated to perform military service, the employing agency must submit to the record keeper Form TSP–5–R, Request to Restore Forfeited Funds, to have those funds restored.

(f) *Thrift Savings Plan Service Computation Date.* The agencies must include the period of military service in the Thrift Savings Plan Service Computation Date (TSP–SCD) of all reemployed FERS employees. If the period of military service has not been credited, the agencies must submit an employee data record to the TSP record keeper containing the correct TSP Service Computation Date.

[FR Doc. 99–6756 Filed 3–22–99; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–ANE–02–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW2000 series turbofan engines. This proposal would require initial and repetitive inspections of certain High Pressure Turbine (HPT) stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disk is exposed during a shop visit, and if a subsurface anomaly is found, removal from service and replacement with a serviceable part. This proposal is prompted by the results of a stage 1 HPT disk fracture investigation, which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed during a forging process. The actions specified by the proposed AD are intended to prevent HPT disk fracture, which could result in an uncontained engine failure, and damage to the aircraft.

DATES: Comments must be received by April 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

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 should 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 99–ANE–02–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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–ANE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report of an uncontained high pressure turbine (HPT) disk failure on an International Aero Engines (IAE) V2500–A1 series turbofan engine. The investigation into the cause of that failure revealed that certain HPT stage 1 and stage 2 disks were manufactured using a process that resulted in a subsurface defect in the disk material. The subsurface defect, called a ''clean linear'' anomaly, was formed during a specific forging process also used for HPT stage 1 and stage 2 disks for the PW2000 series engines. The anomaly may not have been detected during ultrasonic inspection during manufacture due to its orientation and shape. The disk failure occurred as a result of a crack that initiated at the anomaly site. An improved ultrasonic inspection has been developed which is more capable of detecting anomalies, or cracks that originate from the sites of anomalies, prior to disk failure. V2500–A1, PW2000 and JT9D–7R4 1st and 2nd stage HPT disks manufactured using this same material and forging process are affected. There are approximately 332 PW2000 HPT stage 1 and stage 2 disks that were manufactured using this material and forging process, and those disks have been identified by serial number in Pratt & Whitney (PW) Service Bulletin (SB) PW2000–72–628, dated January 4, 1999. This condition, if not corrected, could result in an HPT disk fracture, which could result in an uncontained engine failure, damage to the aircraft, and an inflight engine shutdown.

The FAA has reviewed and approved the technical contents of PW Service Bulletin (SB) PW2000 72–628, dated January 4, 1999, that describes inspection procedures and criteria for certain stage 1 and 2 HPT disks.

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 require initial and repetitive inspections of certain stage 1 and stage 2 HPT disks using an improved ultrasonic method whenever the disk is exposed during a shop visit. If a subsurface anomaly is found, the disk must be removed from service and replaced with a serviceable part. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 332 affected disks installed in engines in the worldwide fleet. The FAA estimates that 166 engines on aircraft of U.S. registry would be affected by this proposed AD, that the shipping cost per disk to the facility which will inspect the disk and its return will be approximately $210 per disk, that no engines will require an unplanned HPT module disassembly/assembly, that the inspection would take approximately 12 work hours per disk to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Some disks will require multiple inspections during their service life. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $450,000. The manufacturer has advised the FAA that the all costs relative to the inspection will be reimbursed to the operator.

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 adding the following new airworthiness directive:

Pratt & Whitney: Docket 99–ANE–02–AD.

Applicability: Pratt & Whitney PW2037, PW2040, PW2037M, PW2240 and PW2337 series turbofan engines, installed on but not limited to Boeing 757 and Ilyushin IL–96T series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk fracture, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For engines with a HPT stage 1 or Stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW SB PW2000–72–628, dated January 4, 1999, perform initial and repetitive ultrasonic inspections in accordance with the Accomplishment Instructions section of PW SB PW2000–72–628, dated January 4, 1999, as follows:

(1) Perform an initial ultrasonic inspection at the next HPT disk piece part accessibility after the effective date of this AD.

(2) Thereafter, perform an ultrasonic inspection at each HPT disk piece part accessibility after the initial inspection

performed in accordance with paragraph (a)(1) of this AD.

(b) Remove from service those HPT disks found with a crack indicating a subsurface anomaly and replace with a serviceable part.

(c) For the purposes of this AD, HPT disk piece part accessibility is defined as the separation of the HPT disk from the HPT module.

(d) For engines that do not have a HPT stage 1 or Stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW SB PW2000–72–628, dated January 4, 1999, no inspections are required.

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

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

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

Issued in Burlington, Massachusetts, on March 16, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–6979 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–112–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all The New Piper Aircraft, Inc. (Piper) Models PA–46–310P and PA–46–350P airplanes. The proposed AD would require calibrating the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring for all of the applicable airplanes, and repairing or replacing any turbine inlet temperature system that fails the calibration test. The proposed AD would also require repetitively replacing the turbine inlet temperature probe on the Model PA–46–350P airplanes, and inserting a copy of this AD into the Pilot's Operating Handbook of certain airplanes. The proposed AD is the result of field reports that indicate service accuracy problems with the existing turbine inlet temperature system. The actions specified by the proposed AD are intended to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

DATES: Comments must be received on or before May 21, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Young, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097; e-mail address: ''Donald.Young@faa.gov''.

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 should 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 that summarizes 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 No. 98–CE–112–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, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports that indicate service accuracy problems with the existing turbine inlet temperature system on Piper Models PA–46–310P and PA–46–350P airplanes. In particular, an accident report cited turbine inlet temperature probe inaccuracy as a contributing factor.

In addition, 9 airplanes were randomly checked for turbine inlet temperature system accuracy. Six of these airplanes revealed turbine inlet temperature system inaccuracy (60 degrees to 110 degrees low at the 1,750-degree test point). More extensive analysis of these systems reveals the following:

—The turbine inlet temperature probe used on the Model PA–46–310P airplanes (part number 471–990) when calibrated correctly is accurate and durable; and

—The turbine inlet temperature probe used on the Model PA–46–350P airplanes (part number 481–392) when calibrated correctly is accurate, but not durable.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—the turbine inlet temperature systems on all Piper Models PA–46–310P and PA–46–350P airplanes should be calibrated to assure the accuracy of

the existing turbine inlet temperature indicator and wiring;

—the turbine inlet temperature probe used on the Model PA–46–350P airplanes (part number 481–392) should be replaced every 250 hours time-in-service (TIS); and

—AD action should be taken to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA–46–310P and PA–46–350P airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require calibrating the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring for all of the applicable airplanes, and repairing or replacing any turbine inlet temperature system that fails the calibration test. The proposed AD would also require repetitively replacing the turbine inlet temperature probe on the Model PA–46–350P airplanes, and inserting a copy of this AD into the Pilot's Operating Handbook of certain airplanes.

Cost Impact

The FAA estimates that 580 airplanes in the U.S. registry would be affected by the proposed calibration, that it would take approximately 4 workhours per airplane to accomplish the proposed calibration, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed calibration on U.S. operators is estimated to be $139,200, or $240 per airplane.

The FAA estimates that it would take approximately 1 workhour per airplane to accomplish the proposed initial turbine inlet temperature probe replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $518. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $335,240, or $578 per airplane. These figures only take into account the initial replacement and do not take into account the cost of subsequent repetitive replacements. The FAA has no way of determining the number of replacements each owner/operator will incur over the life of the affected airplanes.

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 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) 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 has been placed 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 adding a new airworthiness directive (AD) to read as follows:

The New Piper Aircraft, Inc.: Docket No. 98–CE–112–AD.

Applicability: Models PA–46–310P and PA–46–350P airplanes, all serial numbers, 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 (h) 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 in the body of this AD, unless already accomplished.

To prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane, accomplish the following:

(a) For all affected airplanes (Models PA–46–310P and PA–46–350P), within the next 100 hours time-in-service (TIS) after the effective date of this AD, accomplish the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration, as follows:

(1) *For Model PA–46–310P airplanes:* Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection in accordance with the PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (section A.(1)(d), pages 1 and 2); and accomplish the Turbine Inlet Temperature System Calibration in accordance with the PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (pages 3 and 4); and

(2) *For Model PA–46–350P airplanes:* Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection in accordance with the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1); and accomplish the Turbine Inlet Temperature System Calibration in accordance with the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.I., pages 4 through 7).

Note 2: Operators of the Model PA–46–350P airplanes with over 150 hours TIS on the currently installed turbine inlet temperature probe will have to replace the probe as required in paragraph (c) of this AD. In this case, the operator may want to accomplish the replacement prior to the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration.

(b) For all affected airplanes (Models PA–46–310P and PA–46–350P), if the results of paragraph (a) of this AD cannot be met (the turbine inlet temperature system indicator cannot be calibrated or the turbine inlet temperature probe fails the inspection), prior to further flight, repair or replace the failed parts with serviceable parts of the following part numbers:

(1) Lewis Turbine Inlet Temperature Analog Indicator, part number 471–008.

(2) Lewis Turbine Inlet Temperature Digital Indicator, part number 548–811.

(3) Turbine Inlet Temperature Probe, part number 471–009 for the Model PA–46–310P airplanes and part number 481–392 for the PA–46–350P airplanes.

(4) Only the Lewis Turbine Inlet Temperature Analog Indicator (referenced in paragraph (b)(1) of this AD) has a zero adjustment screw. The Lewis Turbine Inlet Temperature Digital Indicator (referenced in

paragraph (b)(2) of this AD) must be returned to the factory for adjustment or replacement.

(c) For the Model PA–46–350P airplanes, upon accumulating 250 hours TIS on the currently installed turbine inlet temperature probe or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 250 hours TIS; replace the part number 481–392 turbine inlet temperature probe with a new one of the same part number.

(d) For the operators of the airplanes presented in paragraphs (d)(1) and (d)(2) of this AD, within the next 100 hours TIS after the effective date of this AD, incorporate the emergency operation procedures specified in paragraph (e) of this AD for when a turbine inlet temperature system failure occurs while in-flight by inserting a copy of this AD into the applicable Pilots' Operating Handbook/Airplane Flight Manual (AFM/POH):

(1) For all operators of the Model PA–46–310P airplanes; and

(2) For those operators of the Model PA–46–350P airplanes that do not have the applicable POH revision incorporated as follows:

POH	Revision/date	Affected serial numbers
VB–1332	16/November 14, 1997	4622001 through 4622200.
VB–1609	1/November 21, 1997	463001 through 4636020.
VB–1602	1/November 28, 1997	4636021 through 4636131.
VB–1446	New/December 3, 1997	all serial numbers beginning with 4636132.

(e) The following are emergency operation procedures for when a turbine inlet temperature system failure occurs while in-flight:

(1) *For Model PA–46–310P airplanes:*

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent, or landing, maintain FULL RICH mixture to assure adequate fuel flow for engine cooling.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain cruise power setting and lean to 6 gallons per hour (GPH) fuel flow above that specified in the Power Setting Table in Section 5 of the AFM/POH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(2) *For Model PA–46–350P airplanes:*

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent or landing, set power per the POH Section 5 Power Setting Table and then lean to the approximate POH Power Setting Table fuel flow plus 4 GPH.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain the power setting and increase indicated fuel flow by 1 GPH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(f) Inserting a copy of this AD into the applicable POH/AFM as required by paragraph (d) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with paragraph (d) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(i) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 12, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6975 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–16–AD]

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems (MDHS) Model 600N helicopters. This proposal would require applying serial numbers to several life-limited components related to pitch control and removing and replacing the components according to new life-limits. This proposal is prompted by fatigue tests that indicate a need for shorter service lives for these components. The actions specified by the proposed AD are intended to prevent failure of the collective pitch control tubes, collective stick housings, and collective pitch tube assemblies, which can cause loss of collective pitch control, and subsequent loss of control of the helicopter.

DATES: Comments must be received by May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B11, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Frederick A. Guerin, Aerospace Engineer, Airframe Branch, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

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 should 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 No. 98–SW–16–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to MDHS Model 600N helicopters. This proposal would require three actions: (1) applying serial numbers to the collective pitch control tubes, part number's (P/N's) 369A7348 and 369H7809, and collective stick housings, P/N's 369A7347 and 369A7820; (2) adding the co-pilot collective pitch control tube, P/N 369A7809, to the Airworthiness Limitations section, Component Mandatory Replacement Schedule (CMRS), of the maintenance manual; and (3) reducing the service lives from those stated in the Airworthiness Limitations section, CMRS, of the pilot collective pitch control tube, P/N 369A7348, collective stick housings, P/N's 369A7347, 369A7820, and 369H7837, and collective pitch tube assemblies, P/N's 369H7354–3 and 369H7838–3. The following table shows the current life-limits and the proposed life-limits.

P/N	Component	Proposed life-limit (hours time-in-service)	Current life-limit (hours time-in-service)
369A7347	Housing, collective stick	450	Unlimited
369A7348	Tube, collective pitch control	400	Unlimited
369H7354–3	Tube assembly, collective pitch (pilot)	600	1,500
369A7809	Tube, collective pitch (co-pilot)	1,800	Not Determined
369A7820	Housing, collective stick	450	Unlimited
369H7837	Housing, collective stick	450	Unlimited
369H7838–3	Tube assembly, collective pitch (co-pilot)	1,000	1,500

This proposal is prompted by fatigue tests that indicate a need for shorter service lives for these components. The actions specified by the proposed AD are intended to prevent failure of the collective pitch control tubes, collective stick housings, and collective pitch tube assemblies, which can cause loss of collective pitch control, and subsequent loss of control of the helicopter.

The FAA has reviewed McDonnell Douglas Helicopter Systems Service Bulletin SB600N–009, dated February 24, 1998, that lists the service numbers to be applied to the four components for the listed aircraft serial numbers.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHS Model 600N helicopters of the same type design, the proposed AD would require applying serial numbers to several life-limited components related to pitch control and removing and replacing several components according to new life-limits. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 16 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per helicopter to apply the serial numbers, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $480.

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 adding a new airworthiness directive to read as follows:

McDonnell Douglas Helicopter Systems: Docket No. 98–SW–16–AD.

Applicability: Model 600N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the collective pitch control tubes, collective stick housings, and collective pitch tube assemblies, loss of collective pitch control, and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before reaching 400 hours time-in-service (TIS), apply the serial number (S/N) listed in McDonnell Douglas Helicopter System Service Bulletin No. 600N–009, dated February 24, 1998 (SB), to the two collective stick housings, P/N's 369A7347 and 369A7820; the pilot collective pitch control tube, P/N 369A7348; and the co-pilot collective pitch control tube, P/N 369A7809, in the most visible spot for the specified aircraft S/N.

(b) Remove and replace the following flight control components according to the stated life-limits:

P/N	Component	Life-Limit (hours TIS)
1369A7347	Housing, collective stick	450
369A7348	Tube, collective pitch control (pilot)	400
369H7354–3	Tube assembly, collective pitch (pilot)	600
369A7809	Tube, collective pitch control (co-pilot)	1,800
369A7820	Housing, collective stick	450
369H7837	Housing, collective stick	450
369H7838–3	Tube assembly, collective pitch (co-pilot)	1,000

(c) Create a component history card or equivalent record in the helicopter log and record the helicopter TIS at installation for each of the components listed in paragraph (b) of this AD.

(d) This AD revises the Airworthiness Limitations Section of the maintenance manual by reducing the life-limits of the pilot collective pitch control tube, the collective stick housings, and the collective pitch tube assemblies, and adding the co-pilot collective pitch control tube to the Airworthiness Limitations section, Component Mandatory Replacement Schedule.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

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

Issued in Fort Worth, Texas, on March 16, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–7025 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–4]

Proposed Amendment of Class E Airspace; Thomson, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Thomson, GA. The Cedar Nondirectional Radio Beacon (NDB) has been established 4.49 miles west of Runway (RWY) 10 at the Thomson-McDuffie County Airport, from which a NDB RWY 10 Standard Instrument Approach Procedure (SIAP) will be developed. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Thomson-McDuffie County Airport. An extension via the 276 degree bearing from the Cedar NDB for the NDB RWY 10 SIAP will be necessary. The length of the Class E airspace extension west of the NDB will be 7 miles, and the width of the airspace extension will be 7 miles.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–4, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

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. Comments 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. 99–ASO–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received 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 the comments received. All comments

submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Thomson, GA. The Cedar NDB has been established 4.49 miles west of RWY 10 at the Thomson-McDuffie County Airport, from which a NDB RWY 10 SIAP will be developed. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Thomson-McDuffie County Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface 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 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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).

The Proposed Amendment

In consideration of the foregoing, 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 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.

* * * * *

ASO GA E5 Thomson, GA [Revised]

Thomson-McDuffie County Airport, GA

(Lat. 33°31′47″N, long. 82°31′00″W

Cedar NDB

(Lat. 33°31′59″N, long. 82°36′51″W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 7.5-mile radius of Thomson-McDuffie Airport and within 3.5-miles each side of the 276 degree bearing from the Cedar NDB, extending 7 miles west of the Cedar NDB.

* * * * *

Issued in College Park, Georgia, on March 5, 1999.

Signed by:

Nancy B. Shelton,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 99–7072 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113744–98]

RIN 1545–AW69

Passive Foreign Investment Companies; Definition of Marketable Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (REG–113744–98), which was published in the **Federal Register** Tuesday, February 2, 1999 (64 FR 5012), relating to the new mark to market election for stock of a passive foreign investment company.

FOR FURTHER INFORMATION CONTACT: Robert Laudeman (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 1296 of the Internal Revenue Code.

Need for Correction

As published, REG–113744–98 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–113744–98), which was the subject of FR Doc. 99–1666, is corrected as follows:

On page 5012, column 1, in the preamble under the caption **ADDRESSES**, line 9, the language ''to: CC:DOM:CORP:R (REG–110524–98),'' is corrected to read ''to: CC:DOM:CORP:R (REG–113744–98),''.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 99–6949 Filed 3–22–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, and 40

[REG–100729–98]

RIN 1545–AW41

Electronic Funds Transfers of Federal Deposits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT). The proposed regulations affect certain taxpayers required to make deposits of Federal taxes. For calendar years beginning after 1999, the proposed regulations provide rules under which certain taxpayers must make deposits by EFT.

DATES: Written and electronic comments must be received by May 24, 1999.

Outlines and topics to be discussed at the public hearing scheduled for May 11, 1999, at 10 a.m. must be received by April 20, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–100729–98), 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–100729–98), 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 http://www.irs.ustreas.gov/prod/tax__regs/comments.html (the IRS Internet address). The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Ave. NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Vincent Surabian, (202) 622–4940; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael 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), the Estate Tax Regulations (26 CFR part 20), the Gift Tax Regulations (26 CFR part 25), the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40).

On July 14, 1997, the IRS issued final regulations under section 6302(h) of the Internal Revenue Code relating to the deposit of Federal taxes by EFT (TD 8723, 62 FR 37490). Those final regulations gradually phase taxpayers into the EFT system through 1999. In the final stages of the phase-in under those regulations, taxpayers with more than $50,000 in employment tax deposits during calendar year 1995, 1996, or 1997, and taxpayers that, in any of those years, had no employment tax deposits but made deposits of other depository taxes exceeding $50,000, were required to begin to deposit by EFT.

At present, the regulations do not require EFT use by a new or growing taxpayer with annual deposits that did not exceed the prescribed threshold for the first time before 1998.

Explanation of Provisions

1. Increase in Current $50,000 Threshold

Section 6302(h) requires that in fiscal year 1999 and subsequent years 94 percent of employment taxes and 94 percent of other depository taxes be collected by EFT. The IRS and Treasury Department previously concluded that the deposit threshold had to be set at $50,000 to satisfy this statutory requirement. More recent experience suggests, however, that the statutory requirement can be satisfied even if the threshold is set at a substantially higher level. Moreover, an increase in the threshold would allow small businesses to make the transition to the EFT system at their own pace as they adopt electronic funds transfer in their other business operations. Accordingly, the proposed regulations increase the deposit threshold to $200,000 in aggregate Federal tax deposits during a calendar year.

The new threshold will be applied initially to 1998 deposits, and taxpayers that exceed the threshold in 1998 will be required to deposit by EFT in 2000 and subsequent years. Taxpayers that first exceed the threshold in 1999 or a subsequent year will similarly be required to deposit by EFT after a one-year grace period. A taxpayer that exceeds the threshold will not be permitted to resume making paper coupon deposits if its deposits fall below $200,000 in a subsequent year. Although a similar rule applies under the current regulations, taxpayers that are currently required to deposit by EFT will be given a fresh start and will not be required to use EFT unless they exceed the $200,000 threshold in 1998 or a subsequent calendar year.

Under the new rules, only 9 percent of all business taxpayers that make Federal tax deposits will be required to deposit by EFT. The fresh start will allow 65 percent of the taxpayers subject to the EFT requirement under the current regulations to resume making paper coupon deposits beginning in 2000. The IRS and Treasury Department are confident, however, that most of these taxpayers have come to appreciate the simplicity and convenience of the EFT system and will continue to deposit by EFT on a voluntary basis. The continued participation of these taxpayers, coupled with ongoing efforts to encourage voluntary enrollment, should assure 94 percent collections by EFT notwithstanding the increase in the threshold.

2. Taxes Taken into Account in Applying Threshold

The current regulations prescribe one threshold ($50,000 in employment taxes) for depositors liable for employment taxes and a separate threshold ($50,000 in other taxes) for taxpayers with no employment tax liability. Thus, taxpayers that deposit employment taxes but do not exceed the applicable $50,000 threshold are not subject to the EFT requirement even if they deposit large amounts of other depository taxes. In Notice 97–43 (1997–2 C.B. 294), the IRS and Treasury Department invited public comment on two alternatives to these rules and also welcomed any suggestions for a different rule. The first alternative presented in Notice 97–43 is a two-pronged test under which a taxpayer that deposits more than the threshold amount of the employment taxes imposed by chapters 21, 22, and 24 or more than the threshold amount of other depository taxes would be required to deposit by EFT. The second alternative is an aggregate deposits test under which a taxpayer that deposits more than the threshold amount of employment and other taxes combined would be required to deposit by EFT.

The IRS received six comments in response to Notice 97–43. Two commentators stated that the aggregate deposits test would be the most satisfactory. One of these commentators stated that an aggregate test (1) is simple for taxpayers to calculate; (2) is easy for financial institutions to calculate; and

(3) is easy for the IRS to monitor and maintain. The second commentator favored an aggregate deposits test because it would introduce a larger number of taxpayers to the advantages and efficiencies of the EFT system.

Two commentators stated that the present system should be retained because of its simplicity. One of these commentators stated that a taxpayer need consider only one set of figures, its employment taxes, to determine if it is subject to EFT. If the taxpayer has no employment taxes, then the taxpayer would simply look at its other depository taxes. The second commentator favored the present rule because of its belief that the adoption of either of the two proposals described in Notice 97–43 would bring additional smaller employers into the EFT system. The commentator stated that it is unnecessary to bring additional employers into the EFT system because, under the current rule, the IRS is satisfying the requirement of section 6302(h) that more than 94 percent of all depository taxes be deposited by EFT for fiscal year 1999 and thereafter.

The proposed regulations adopt an aggregate deposits test. As the comments illustrate, there is disagreement concerning the relative simplicity of the various options. The view of the IRS and Treasury Department, based on experience with the current system, is that an aggregate deposits test would be, on balance, simpler, less confusing to taxpayers, and more easily administered than a two-threshold rule. The aggregate deposits test also has the advantage of eliminating the anomalous current treatment of taxpayers that deposit small amounts of employment taxes and large amounts of other taxes as if they were smaller than taxpayers that deposit no employment taxes but are otherwise similarly situated. The IRS and Treasury Department believe that the other concern expressed in the comments, that the aggregate deposits test would unnecessarily extend the EFT system to additional small employers, has been adequately addressed by the proposed increase in the threshold.

A fifth commentator suggested that a rule be considered under which a taxpayer could be relieved of the EFT deposit requirement if the taxpayer, after being mandated into the system, fails to deposit the threshold amount during succeeding calendar years. This suggestion has not been adopted because of concerns that it would be more complex and more difficult to administer than the proposed rule.

A final commentator stated that the current regulations make no provision for the consciences of persons whose religious beliefs restrict the use of computer equipment in their businesses. The IRS and Treasury Department are continually sensitive to the limited nature of the technology available to many taxpayers and, for that reason, have developed a system under which, using the ACH debit option, equipment no more complex than a rotary or touch-tone telephone is all that is necessary to make an EFT deposit. A computer is not required.

3. Expansion of Voluntary Payments by EFT

Finally, the current regulations allow the voluntary payment by EFT of certain nondepository taxes, specifically individual income taxes (including estimated taxes). These proposed regulations expand the types of nondepository tax payments for which voluntary payment by EFT is allowed to include nondepository payments of Federal income, estate and gift, employment, and various specified excise taxes.

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 these regulations do not impose a collection of information requirement 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.

Proposed Effective Date

The regulations are proposed to become effective on the date final regulations are published in the **Federal Register**.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 11, 1999, beginning at 10 a.m. The hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by May 24, 1999, and submit an outline of topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by April 20, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Vincent Surabian, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, and 40 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.6302–4 to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6302–4 also issued under sections 6302(a), (c), and (h). * * *

Par. 2. Section 1.6302–4 is revised to read as follows:

§ 1.6302–4 Use of financial institutions in connection with income taxes; voluntary payments by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 20.6302–1 also issued under sections 6302(a) and (h). * * *

Par. 4. Section 20.6302–1 is added to read as follows:

§ 20.6302–1 Voluntary payments of estate taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 20 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 25.6302–1 also issued under sections 6302(a) and (h). * * *

Par. 6. Section 25.6302–1 is added to read as follows:

§ 25.6302–1 Voluntary payments of gift taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 25 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 7. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. Section 31.6302–1 is amended as follows:

1. The heading for paragraph (h)(2) is revised.
2. A heading is added for paragraph (h)(2)(i).
3. New paragraph (h)(2)(i)(C) is added.
4. Paragraph (h)(2)(ii) is revised
5. Paragraph (h)(2)(iii) is added.
6. Paragraph (m) is redesignated as paragraph (n).
7. Paragraph (k) is redesignated as paragraph (m).
8. Paragraph (j) is redesignated as paragraph (k).
9. New paragraph (j) is added.

The additions and revisions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(h) * * *

(2) *Applicability of requirement*—(i) *Deposits for return periods beginning before January 1, 2000.* * * *

(C) This paragraph (h)(2)(i) applies only to deposits required to be made for return periods beginning before January 1, 2000. Thus, a taxpayer, including a taxpayer that is required under this paragraph (h)(2)(i) to make deposits by electronic funds transfer beginning in 1999 or an earlier year, is not required to use electronic funds transfer to make deposits for return periods beginning after December 31, 1999, unless deposits by electronic funds transfer are required under paragraph (h)(2)(ii) of this section.

(ii) *Deposits for return periods beginning after December 31, 1999.* Unless exempted under paragraph (h)(5) of this section, a taxpayer that deposits more than $200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. Thus, a taxpayer that exceeds the $200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in calendar year 2000 by electronic funds transfer.

(iii) *Voluntary deposits.* A taxpayer that is not required by this section to use electronic funds transfer to make a deposit of taxes described in paragraph (h)(3) of this section may voluntarily make the deposit by electronic funds transfer, but remains subject to the rules of paragraph (i) of this section, pertaining to deposits by Federal tax deposit (FTD) coupon, in making deposits other than by electronic funds transfer.

* * * * *

(j) *Voluntary payments by electronic funds transfer.* Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle C of the Internal Revenue Code. Such payment must be made in accordance with procedures prescribed by the Commissioner.

* * * * *

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 9. The authority citation for part 40 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6302(a)–1 also issued under 26 U.S.C. 6302(a) and (h). * * *

Par. 10. Section 40.6302(a)-1 is added to read as follows:

§ 40.6302(a)–1 Voluntary payments of excise taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 40 applies.

Such payment must be made in accordance with procedures prescribed by the Commissioner.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–6948 Filed 3–22–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–99–5013 (HM–229)]

RIN 2137–AD21

Hazardous Materials: Revisions to the Incident Reporting Requirements and the Detailed Hazardous Materials Incident Report DOT Form F 5800.1

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This ANPRM solicits comments on the merits of revising the current incident reporting requirements of the Hazardous Materials Regulations and the Hazardous Materials Incident Report form (DOT Form F 5800.1). The Federal hazardous material transportation law requires the Secretary of Transportation to maintain a facility and technical staff sufficient to maintain a central reporting system to develop a statistical compilation on casualties and conduct reviews on hazardous materials transportation. Any changes resulting from this rulemaking are intended to increase the usefulness of data collected for risk analysis and management by government and industry and, where possible, provide relief from regulatory requirements.

DATES: Send your comments on or before June 21, 1999.

ADDRESSES: Address your comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number, RSPA–99–5013 (HM–229) at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA has received your comments, include a self-addressed stamped postcard. You may also submit your comments by E-mail to rules@rspa.dot.gov. The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You may view public dockets between the hours of 10 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Electronic Access

You may review all comments received by the Dockets Office on the Internet at http://dms.dot.gov. It is available 24 hours a day, 365 days a year. An electronic copy of this document may be downloaded from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at http://www.access.gpo.gov/su__docs or the Office of Hazardous Materials Safety at http://rspa.dot.dov/rulemake.htm. You may obtain copies of DOT Form F 5800.1 and the instruction booklet for completing DOT Form F 5800.1 at the Office of Hazardous Materials Safety's web site at http://hazmat.dot.gov/spills.htm or http://hazmat.dot.gov/ohmforms.htm#incidents.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, at the Office of Hazardous Materials Standards, telephone (202) 366–8553 or Kevin Coburn, at the Office of Hazardous Materials Planning & Analysis, telephone (202) 366–4555, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, the President directed all Federal agencies to perform an extensive review of each of their regulations and eliminate or revise those requirements that are outdated or in need of reform. As a result of its review of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), the Research and Special Programs Administration (RSPA, ''we'') is considering revisions to the incident reporting requirements in §§ 171.15 and 171.16 and the incident report form, DOT Form F 5800.1.

Following a meeting between DOT and members of several trade associations concerning hazardous materials incident reporting, the Association of American Railroads sponsored a workgroup with segments of the transportation community to discuss the DOT Form F 5800.1 and reporting requirements of §§ 171.15 and 171.16. The workgroup meetings were held during the winter of 1997–98. Participants included representatives of all four transportation modes, shippers, container manufacturers, and labor. The workgroup drafted suggestions and submitted them to RSPA. We developed questions based on input from these meetings, the DOT modal agencies, other concerned individuals, and our own initiative. We are now requesting comments on the merits of revising the requirements of §§ 171.15 and 171.16 for incident reporting and revising DOT Form F 5800.1.

Currently § 171.15 provides criteria requiring immediate notification of unintentional hazardous materials releases to the National Response Center. Each carrier making a report under § 171.15 is also required to fill out DOT Form F 5800.1 as required by § 171.16. Additionally, carriers are currently required to fill out DOT Form F 5800.1 for unintentional releases when the conditions of § 171.16 are met. We use the data and information we collect:

- As an aid in evaluating the effectiveness of the existing regulations.
- To assist in determining the need for regulatory changes to cover changing transportation safety problems.
- To determine major problem areas so that the attention of the Department may be more suitably directed to those areas.

We are considering expanding the reporting requirements in §§ 171.15 and 171.16 to include circumstances that are not currently required to be reported. For example, some questions concern reporting of undeclared shipments of hazardous materials whether or not there is a release. We are also considering expanding the reporting requirements to persons other than carriers. Other questions concern reporting of damage to packagings, especially bulk packagings such as cargo tanks, whether or not there has been a release. We anticipate that a modest increase in reporting potentially high-consequence incidents would be offset by reduced reporting requirements for incidents with less serious potential impacts.

This advance notice of proposed rulemaking (ANPRM) is designed to evaluate the need for any change in reporting requirements, to obtain more useful information from DOT Form F 5800.1 submissions and to reduce the regulatory burden on industry. Any changes would be based on both our own initiative and suggestions made by various members of industry. This ANPRM is also consistent with the goals of the President's Regulatory Reinvention Initiative.

II. Impact on Small Businesses

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of rules that have or will have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine

whether such rules should be continued without change, or should be amended or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities. The reviews are to consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. This ANPRM provides an opportunity for small entities to submit information relevant to this review.

III. Plain Language

RSPA intends to revise the Hazardous Materials Incident Report and §§ 171.15 and 171.16 in plain language. Clearer rules will improve both compliance and enforceability. Interested persons are encouraged to submit draft regulatory language they believe clearly and simply communicates regulatory requirements.

We request written comments from interested persons concerning regulatory changes and clarifications that will simplify completion of the Hazardous Materials Incident Report. Interested persons may submit draft regulatory language and comments suggesting ways to write the requirements for reporting hazardous materials incidents which would promote understanding and compliance. Comments that provide reasons and factual data are especially helpful.

IV. Questions

Questions on revising DOT Form F 5800.1 and the associated sections of the HMR generally fall within five categories. These categories are:

- General Issues.
- Telephonic Notification.
- Written Reports.
- DOT Form F 5800.1.

Customer Uses and Needs.

- National Transportation Safety Board recommendations.

An exact copy of the current DOT Form F 5800.1 is included with this ANPRM as an aid to the reader. In addition, §§ 171.15 and 171.16 are set forth in their entirety, as follows:

§ 171.15—Immediate Notice of Certain Hazardous Materials Incidents

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which:

(1) As a direct result of hazardous materials—

(i) A person is killed; or

(ii) A person receives injuries requiring his or her hospitalization; or

(iii) Estimated carrier or other property damage exceeds $50,000; or

(iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§ 174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of infectious substances (etiologic agents); or

(4) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 kg (882 pounds) for solids; or

(5) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

(b) Except for transportation by aircraft, each notice required by paragraph (a) of this section shall be given to the Department by telephone (toll-free) on 800–424–8802. Notice involving shipments transported by aircraft must be given to the nearest FAA Civil Aviation Security Office by telephone at the earliest practical moment after each incident in place of the notice to the Department. Notice involving etiologic agents may be given the Director, Centers for Disease Control, U.S. Public Health Service, Atlanta, Ga., (800) 232–0124, in place of the notice to the Department or (toll call) on 202–267–2675. Each notice must include the following information:

(1) Name of reporter.

(2) Name and address of carrier represented by reporter.

(3) Phone number where reporter can be contacted.

(4) Date, time, and location of incident.

(5) The extent of injuries, if any.

(6) Classification, name, and quantity of hazardous materials involved, if such information is available.

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by § 171.16.

Note: Under 40 CFR 302.6 EPA requires persons in charge of facilities (including transport vehicles, vessels and aircraft) to report any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to the U.S. Coast Guard National Response Center at (toll free) 800–424–8802 or (toll) 202–267–2675.

§ 171.16—Detailed Hazardous Materials Incident Reports

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which any of the circumstances set forth in 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge:

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (Form F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM–63 , Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained, for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material—

(1) Transported under one of the following proper shipping names:

(i) Consumer commodity.

(ii) Battery, electric storage, wet, filled with acid or alkali.

(iii) Paint and paint related material when shipped in packagings of five gallons or less.

(2) Prepared and transported as a limited quantity shipment in accordance with this subchapter.

(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:

(1) Incidents required to be reported under 171.15(a);

(2) Incidents involving transportation aboard aircraft;

(3) Except for consumer commodities, materials in Packing Group I; or

(4) Incidents involving the transportation of hazardous waste.

General Issues

1. Should the hazardous materials incident reporting requirements be

extended to persons other than carriers (such as freight forwarders, warehouse operators, consignees, etc.)?

2. Should RSPA require reporting of any incident involving discovery of an undeclared shipment of a hazardous material whether or not there is a release of the hazardous material? Should the expanded requirement apply only to incidents discovered by a carrier during transportation? Should the expanded requirement apply to discovery by a consignee or other person during or following delivery of the material?

Telephonic Notification (see § 171.15)

3. Currently, immediate notification is required for incidents where estimated carrier or other property damage exceeds $50,000. Is this monetary reporting threshold reasonable? Should it be modified or eliminated? If modified, to what amount? Why?

4. Should any other current requirements for immediate notification be modified or eliminated? If so, explain your suggested modification, the reasons for the modification, and anticipated impacts.

5. Should RSPA require immediate telephonic notification for any other type of incident?

6. In addition to notifying the National Response Center, should a carrier also be required to give immediate telephonic notification of an incident to the person who offered the hazardous material for shipment?

7. If an incident requiring immediate telephonic notification occurs at the location of an offeror or consignee, should the offeror or consignee be required to provide the notification? Should such notification be in addition to, or instead of notification from the carrier? What would be the usefulness and burdens associated with such a requirement?

Written Reports (see § 171.16)

8. Is the current regulatory language clear as to when a written incident report is required? If not, what changes should RSPA make?

9. To provide a broader perspective for risk management in more critical hazardous material transportation situations, should additional information be collected through the incident reporting system to document successful performance and better gauge the integrity of packaging? For instance, should information be collected on certain highway accidents whether or not a hazardous material has been released? Would an appropriate definition of ''accident'' for reporting purposes be ''any collision, rollover, jack-knife, or departure from the roadway''? Should additional reporting be limited to certain packagings or materials such as—

- Cargo tanks, portable tanks, and IM portable tanks with a capacity greater than 1000 gallons;
- Cylinders containing flammable gas with a water capacity greater than 100 pounds;
- Explosives in packaging greater than 50 pounds; or
- Toxic-by-inhalation liquids or gases in any quantity and packaging?

Should such additional reporting be limited to situations where there is exposure to fire or damage to the packaging? Should reporting be required for railway accidents that do not involve the unintentional release of hazardous materials, or do mechanisms exist to adequately capture this information apart from DOT Form F 5800.1?

10. Should RSPA expand the exceptions in § 171.16(c) to include any other hazardous material; class, division, or packing group; or quantity limitations? If so, indicate the exception and why.

11. Is there a spill quantity of an excepted material that should trigger incident reporting? For example, a spill of paint from a packaging with a capacity of less than 5 gallons is not reportable. Should a spill of a certain quantity of hazardous material be reportable regardless of the capacity of the packaging in which it was contained (e.g., a release from numerous small packagings)?

DOT Form F 5800.1 (See Appendix)

12. Should RSPA develop an abbreviated incident report form for incidents of low severity? What criteria could be used as a threshold? What minimal information should be required for a low severity incident?

13. Should DOT Form F 5800.1 be structured to more accurately describe the cause and manner of a packaging failure? How could this be done to better capture human causal factors?

14. Would replacing the current check boxes on DOT Form F 5800.1, sections V 24 and VI 25 thru 29, with numerically coded responses or other means to better identify how the incident occurred, increase the difficulty or lengthen the time it takes to complete the report?

15. Would replacing the boxes on DOT Form F 5800.1, section VIII parts 41 thru 45, with numerically coded responses or other means to identify the reasons why the packaging failed, increase the difficulty or lengthen the time it takes to complete the report?

16. What additional fields, if any, should be included on the report form to indicate the amount of hazardous material that was initially in the package?

17. Would the information required by section VII of the report form be easier to understand if column C was removed, column A was renamed ''Inner Package'', and column B was renamed ''Outer Package''? Why?

18. Should there be either separate sections on DOT Form F 5800.1 for reporting bulk and non-bulk packagings or a separate incident report form for these packagings?

19. Should we require more specific incident location data, such as mile-post or street address, if available? How difficult would it be to obtain and report this information? What additional benefit would the information provide?

20. How can better information be provided on DOT Form F 5800.1 as to the transportation phase of an incident (e.g., when the incident most likely occurred?)

21. Should RSPA require updates to Section V 18 through V 23, the incident consequences fields, if additional or better data are available after the incident report form was submitted to DOT? Should RSPA set an amount or percentage change to trigger filing of a supplemental report?

22. Should better information on release duration be collected (for example, the length of time a vapor is dispersed)? How could this be done?

23. How can RSPA acquire better information on failures, such as estimated dimensions of cracks or punctures?

24. What burden would you incur from a requirement to submit copies of photographs in your possession when specified criteria are met?

25. Should reporting of information concerning duration of an evacuation be included on the incident report form?

26. Should RSPA add an additional section to the incident report form to include information regarding who was injured or required hospitalization (e.g., general public, employees, or emergency response personnel)?

27. Should RSPA add a section to the incident report form to identify the UN packing group, if any, of the hazardous material and the packaging?

28. Are you aware of other Federal reporting forms that duplicate information required by DOT Form F 5800.1? If so, how could RSPA link the necessary transportation data to other required Federal reporting forms?

Customer Uses and Needs

29. What data and information do you use from the incident report form and for what purpose?

30. What additional data not now collected on the incident report form should be collected and for what purpose would it be used?

31. Should access to incident data be available via the Internet? If only select data could be provided because of cost or technology considerations, what data would be most useful to you?

32. RSPA is considering optional electronic filing of incident reports by facsimile (fax), electronic mail (e-mail), and Internet. Do you have recommendations concerning implementation of electronic filing? Are there other means of electronic filing that RSPA should consider?

33. How would you use a tracking system for DOT Form F 5800.1 submissions and processing status?

National Transportation Safety Board (NTSB) Recommendations

Recommendation R–89–52 states that RSPA should:

> Establish procedures that require carriers reporting hazardous materials incidents under the provisions of 49 CFR 171.16 to notify shippers whose hazardous materials shipments are involved.

34. In accordance with NTSB recommendation R–89–52, what would be the potential benefits or impacts of requiring carriers (other than private motor carriers) reporting hazardous materials incidents under 49 CFR 171.16 to notify shippers whose hazardous materials shipments are involved in the incident being reported?

Recommendation H–92–6 states that RSPA should:

> Implement, in cooperation with the Federal Highway Administration, a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving DOT specification cargo tanks.

35. In accordance with NTSB recommendation H–92–6, how could RSPA, in cooperation with FHWA, improve the current incident reporting program to collect information identifying patterns of cargo tank equipment failures, including reporting of all accidents involving a DOT specification cargo tank, whether or not a release occurred?

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This ANPRM is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The costs and benefits associated with this rulemaking are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. This determination may be revised as a result of public comment.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This proposed rule concerns the written notification, recording, and reporting of the unintentional release in transportation of hazardous materials. If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA requests comments on what the effective date of Federal preemption should be for any new requirements RSPA may propose concerning the specified covered subject.

C. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule would not significantly or uniquely affect the Indian tribal communities, the funding and consultation requirements of the Executive Order do not apply.

D. Regulatory Flexibility Act

This ANPRM requests information on a series of questions which will be used to develop a proposal to amend provisions of the HMR addressing incident reporting, including the report form. RSPA anticipates that this rulemaking action will generally reduce burdens for most persons required to submit hazardous materials incident reports, some of whom are small entities. Since there are no specific proposals in this ANPRM, there are not costs to be evaluated. If a rulemaking is proposed, the impacts are anticipated to be so minimal as not to warrant preparation of a regulatory impact analysis. Therefore, I certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This ANPRM does not propose any new information collection burdens.

F. Regulation Identifier Number (RIN)

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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Issued in Washington, DC on March 17, 1999, under the authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–7040 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571, 585, 587, and 595

[Docket No. NHTSA 98–4405, Notice 3]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of a technical workshop.

SUMMARY: Because biomechanical performance criteria are essential to the successful design, evaluation, and regulation of vehicle safety systems with air bags, NHTSA is holding a technical workshop to provide an additional opportunity for a continuing dialog with the biomechanics community to insure that appropriate criteria are considered during current rulemaking activities. Attendance is open to both participants (presenters and discussants) and observers.

DATES: *Public Workshop:* We will hold the public workshop on April 20 and 21, 1999, from 9 a.m. to 5 p.m. each day. Those wishing to participate in the workshop should contact Dr. Rolf Eppinger, at the address, telephone, or e-mail listed below, by April 8, 1999. If you plan to present a statement during the meeting, please provide a copy of your statement to Dr. Eppinger by April 13, 1999.

Written Comments: Written comments may be made to the agency and must be received by April 30, 1999.

ADDRESSES: *Public Workshop:* We will hold the public workshop in room 2230 of the Nassif Building, 400 Seventh St., SW, Washington, DC 20590.

Written Comments: If you wish to submit written comments on the issues related to or discussed at this workshop, they should refer to Docket No. NHTSA 98–4405, Notice 3, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Dr. Rolf Eppinger, Office of Human-Centered Research, 400 Seventh Street, SW, Washington, DC 20590 (telephone 202–366–4720; fax 202–366–5670, *reppinger@nhtsa.dot.gov*).

For legal issues: Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (telephone 20–-366–2992; fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

A. Background

On September 18, 1998, we published in the **Federal Register** (63 FR 49958) a notice of proposed rulemaking (NPRM) to upgrade Standard No. 208, Occupant Crash Protection, to require advanced air bags. The proposal would require that improvements be made in the ability of air bags to cushion and protect occupants of different sizes, both belted or unbelted, and would require air bags to be redesigned to minimize risks of air-bag-induced injuries to infants, children, and other occupants seated in a variety of nonstandard positions. The agency held a public meeting relating to this proposal on November 23 and 24, 1998.

Essential parts of our proposal are biomechanical performance criteria (injury criteria and associated performance limits) that evaluate and limit the impact to test dummies to appropriately safe levels under specified test conditions. In the proposal, we referred to and provided a supplemental report titled ''Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems' that detailed the sources and processes we used to arrive at our proposed biomechanical performance criteria. Comments on these proposed performance criteria ranged from agreement with NHTSA's proposals to proposals of alternative criteria and limits.

In light of the diversity of opinions expressed and in order to ensure that we consider appropriate criteria in developing the final rule, we will hold a technical workshop at which interested persons can present, and workshop participants can discuss, the technical bases and merits of the performance criteria they believe are the most appropriate for the agency to adopt.

B. Public Workshop

1. Purposes and Issues

- The purposes of the workshop are to: gather pertinent information and/or comment concerning the technical bases and rationale for the biomechanical performance criteria that should be considered by the agency for use in evaluating and regulating the performance of advanced air bag safety systems.
- Obtain specific technical comments, discussion, and/or constructive input related to the biomechanical performance criteria and their limits as proposed by the agency in its Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** (63 FR 49958) on September 18, 1998, or those criteria and limits as recommended by commenters in response to the notice.
- Provide an opportunity for interested persons to present other data and criteria thought biomechanically relevant and appropriate for application in the automotive crash environment but not cited by either NHTSA or in the comments on the September 1998 NPRM.

Specific issues to be considered and discussed during the workshop include:

- What are the appropriate criteria and their biomechanical bases that can be used for the various body regions at risk in a crash? (Specific body regions to be considered include as a minimum the skull/brain, the neck, and the thorax.)
- What statistical techniques are appropriate to extract meaningful relationships between measurable engineering parameters and the probability of a certain injury outcome?
- What factors should be considered in the evaluation of alternative criteria?
- What scaling techniques are appropriate to extend a criterion's form and limits to validly encompass the wide range of occupant sizes being addressed by NHTSA? (From 12-month-old infant, to a 50th percentile adult male.)

2. Availability of Relevant Documents

The September 18, 1998, proposal for advanced air bags, the biomechanical support paper, and comments on the proposal have been placed in the docket. To obtain them, you may either visit the docket in Washington, DC, or access them via the Web.

The docket is located in Room PL–401, 400 Seventh Street, SW, Washington, DC. Docket hours are 9 a.m. to 4 p.m., Monday through Friday. The Docket Management Web site is at ''http://dms/.dot.gov/''. You should search for Docket number 4405.

The September 18 proposal (typewritten version) and the two technical papers are also available on NHTSA's Web site. The address for this site is ''http://www.nhtsa.dot.gov/''. You should select ''Advanced Air Bags'' under ''Popular Information.''

3. Procedural Matters

The purpose of this workshop is to provide NHTSA an opportunity for further dialog with the biomechanics community and interested parties to gather information, data, and opinions on proposals by and to the agency regarding biomechanical performance criteria needed to support the agency's recently proposed rulemaking initiatives. To maximize the output of the workshop within the limited time available, the first topic to be addressed will concern the appropriateness of the various statistical techniques used to analyze the available biomechanical data. Subsequent topics, in the order of their presentation, will be discussions of proposals for criteria for the skull/brain, neck, and the torso. The order of events in each topic area will be: A short presentation of the NHTSA proposal presented in the NPRM. Then, presentations by persons and organizations on the proposals and/or comments they made to the docket. This will be followed by presentations of any new or previously uncited data by interested persons, an open discussion by workshop participants of the technical merits of the previous presentations, and a summary statement by the workshop. To insure that the agency is fully cognizant of their issues and positions taken at this workshop, a transcript of the workshop will be made. Persons and organizations are also encouraged to submit written comments on the issues related to or discussed at this workshop. They should be submitted (preferably two copies) to Docket Management, National Highway Traffic Safety Administration, Room PL–401, 400 Seventh Street, Washington, DC 20590. Submissions must refer to Docket NHTSA 98–4405, Notice 3.

4. Workshop Participation

This workshop is a public workshop, and attendance is open to the public. You may attend as a participant (a presenter or a discussant) or an observer.

C. Written Comments

Interested persons are invited to submit comments on this notice. Two copies should be submitted to Docket Management at the address given at the beginning of this document.

In addition, for those comments of four or more pages in length, it is requested but not required that 10 additional copies, as well as one copy on computer disc, be sent to: Dr. Rolf Eppinger, Office of Human-Centered Research, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. This would aid the agency in expediting its review of all the comments. The copy on computer disc may be in any format although the agency would prefer that it be in WordPerfect 8.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

List of Subjects in 49 CFR Part 571

Imports, Motor Vehicle Safety, Motor Vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: March 17, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–7073 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Part 1420

[Docket No. BTS–98–4659]

RIN 2139–AA05

Revision to Reporting Requirements for Motor Carriers of Property and Household Goods

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Bureau of Transportation Statistics (BTS) collects data from motor carriers of property on annual report Form M and quarterly report Form QFR. BTS proposes to adopt measures concerning what data from those forms are made publicly available. Summary information, where information cannot be readily matched to an individual carrier, would always be made available. However, the proposed rules would restrict access to individual carrier data for some of the operating statistics, revenue equipment, and employment data items. Access to these data items would be limited to the Department of Transportation (DOT) and to such persons and in such circumstances as DOT determines to be in the public interest or consistent with the Department's regulatory functions and responsibilities.

DATES: Comments must be submitted by April 22, 1999.

ADDRESSES: Please direct comments to the Docket Clerk, Docket No. BTS–98–4659, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–98–4659. The Docket Clerk will date stamp the postcard and mail it back to the commenter.

If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–2, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You can examine all comments that were submitted to the Rules Docket concerning this rulemaking at: Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10 a.m. to 5 p.m. , Monday through Friday, except Federal holidays. Internet users can access the comments at the address: http://dms.dot.gov. Search for Docket Number 4659. Please follow the instructions online for more information and help.

You can download an electronic copy of this document using a modem and

suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. If you have access to the Internet, you can obtain an electronic copy at http://www.bts.gov/mcs/rulemaking.htm.

II. Background

Authority

The Secretary of Transportation has authority to establish regulations for the collection of certain data from motor carriers of property and others. Section 103 of the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (codified at 49 U.S.C. 14123). This authority has been delegated to the Director of the Bureau of Transportation Statistics (BTS). 49 CFR 1.71.

Regulatory History

On November 3, 1998, BTS published a Notice of Proposed Rulemaking (NPRM) which proposed rules for revising the data collected from Class I and II motor carriers of property and household goods (63 FR 59263). It also proposed a system for carriers to request exemptions from filing reports and exemptions from public release of their reported data. On November 25, 1998, BTS published a notice extending the comment period until January 15, 1999 (63 FR 65163). In addition to publishing this Supplemental Notice of Proposed Rulemaking (SNPRM), BTS is also publishing the final rule on the NPRM (Final Rule). The Final Rule is being published in this issue of the **Federal Register**. While the NPRM and Final Rule addressed the issue of confidentiality of individual carrier reports, they did not examine the issue of public availability of the data generally.

Brief History of the Data Collection Program

The Interstate Commerce Commission (ICC) collected financial data from regulated motor carriers from the 1930's until its sunset at the end of 1995, when the data collection was transferred to the Department of Transportation (DOT). *See* 49 U.S.C. 11145 and its implementing regulations at 49 CFR part 1420.[1] Between 1978 and 1994, the ICC significantly reduced the reporting requirements. It substantially shortened report forms and eased record retention requirements. These changes followed the shift in the ICC's focus from close economic regulation of the motor carrier industry to industry oversight. The last revision to accounting and reporting requirements, ICC's Ex Parte No. MC–206, 10 I.C.C.2d 329 (1994), contains additional background information.

Changes Made to the Data Collection Program by the Final Rule

The Final Rule, discussed above in ''Regulatory History,'' implements the ICC Termination Act of 1995 (the ICCTA), which abolished the ICC and transferred some of the data collection program to DOT. While the ICCTA continued the program, it made several changes to it. Similar to the legislation replaced by the ICCTA, then codified at 49 U.S.C. 11145, the ICCTA requires DOT to collect certain data from motor carriers of property and motor carriers of passengers:

> The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

The former 49 U.S.C. 11145 did not explicitly charge ICC to collect information relevant to safety and did not specify minimum data to be collected. The ICCTA also allows DOT to collect certain other data as needed:

> The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

The ICCTA specifies the criteria to be used in designing the reporting program. DOT must consider: (1) Safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. In the ICCTA, Congress explicitly called on DOT to streamline and simplify these reporting requirements to the maximum extent practicable.

Unlike the former 49 U.S.C. 11145, the ICCTA authorizes two types of exemptions from the reporting requirements. Each exemption is based on certain criteria and is granted for a three-year period. The first is an exemption from filing report forms. The requestor ''must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.'' The second is an exemption from public release of a carrier's report. Similar to the other exemption, the requestor must demonstrate that ''the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.'' Further, for the latter exemption the requestor must not be a publicly held corporation or must not be subject to financial reporting requirements of the Securities and Exchange Commission.

To implement the ICCTA, BTS proposed changes to the reporting requirements and proposed procedures for carriers to request exemptions. After receiving comments on the proposal, BTS issued the Final Rule, which made a number of changes to the data collection program. Class I carriers, those with annual operating revenues of $10 million or more, will now file significantly reduced annual and quarterly reports. Class II carriers, those with annual operating revenues of between $3 and $10 million, will file a modified annual report. In addition, the Final Rule sets out procedures for carriers to request exemptions from filing and exemptions from public release of their reports. For more information, please refer to the NPRM and Final Rule.

Content of Carrier Reports

The annual report collects financial and operating data from Class I and Class II for-hire motor carries of property and motor carriers of household goods. The types of data, with varying amount of detail for each, are: (1) Assets, (2) liabilities; (3) operating revenue; (4) other revenue; (5) detailed operating expenses; (6) other expenses; (7) miles, tons, shipments, and ton-miles by industry segment; (8) revenue equipment; and (9) employment and compensation. Only Class I carriers are required to file the quarterly report, which contains much fewer data items and in much less detail. The types of data required in the quarterly report are: (1) Operating revenue; (2) other revenue; (3) operating expenses; (4) other expenses; and (5) miles, tons, and shipments.

The data are used by the Department of Transportation, other federal agencies, motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users. Among the uses of the data are: (1) Developing the U.S. national accounts and preparing the quarterly estimates of the Gross Domestic Product; (2) measuring the performance of the for-hire motor carrier industry

[1] The regulations were recently transferred from 49 CFR part 1249 to 49 CFR part 1420. *See Reports of Motor Carriers; Redesignation of Regulations Pursuant to the ICC Termination Act of 1995*, 63 FR 52192 (Sept. 30, 1998).

and segments within it; (3) monitoring carrier safety; (4) benchmarking carrier performance; and (5) analyzing motor carrier safety, productivity, and its role in the economy.

Confidentiality—Background

Under the current policy, individual carrier reports are made available to the public, unless otherwise prohibited by law. This policy was carried over from the time when the ICC administered the program. With the changes made by the ICCTA, as implemented by the Final Rule, privately held carriers are able to request that their report be kept confidential.

To understand how confidentiality is treated in the ICCTA requires a bit of background about the Freedom of Information Act (FOIA) (5 U.S.C. 552). Under FOIA, any person can obtain records from a federal agency, unless the records (or a part of the records) are protected from disclosure by any of the law's nine exemptions. Records include reports filed with the government by private entities, such as Form M and Form QFR. Of FOIA's nine exemptions, where disclosure is not mandatory, Exemption Four is relevant here. It protects ''trade secrets and commercial or financial information obtained from a person (that is) privileged or confidential.'' Information is confidential under Exemption Four if disclosure would be likely ''to cause substantial harm to the competitive position of the (reporting carrier)'' or ''impair the Government's ability to obtain necessary information in the future.'' [2]

Like FOIA, the ICCTA both calls for information to be available and restricts availability in certain instances. While nothing in the statutory authority explicitly requires that information be made publicly available, it is implied. BTS, in designing the data collection program, must consider not just government needs but also safety needs; use of the data by the private sector, academics, and the public; and the public interest. This gives a strong public policy statement in support of making individual carrier data accessible to the public. While summary data may meet certain needs, individual carrier data would be more helpful to some analyses. Furthermore, effective safety monitoring requires individual carrier data. The implication that individual carrier data generally be made publicly available is further supported by the fact that the ICCTA defines the circumstances under which a carrier's data must be withheld from disclosure. BTS must withhold carrier information from public release in those situations where the carrier can show competitive harm would result. In this case, the carrier's entire report is withheld for three years, except for internal DOT use or in aggregate form. Confidentiality also plays a role in shaping the data collection, since the ICCTA instructs BTS to take into account the need to preserve confidential business information and prevent competitive harm.

Confidentiality—Comments in the NPRM

As discussed above, individual carriers are able to request an exemption if public release would likely result in substantial competitive harm. Several commenters, however, advocated that some or all of the information should be kept confidential for all carriers. That is, the information could cause competitive harm not just in a particular carrier's case, but for carriers generally. These commenters said that is it common knowledge the data can be used by competitors to the reporting carrier's detriment. Publishing only aggregate data would serve most purposes because private data users have other means of getting data. Furthermore, in other industries companies are not required to divulge financial information. Since no public purpose would be served and the information provided by carriers is private, otherwise confidential, commercially sensitive information, it should not be publicly released. These commenters generally stated that the data collected (presumably all or most) fell into the confidentiality category. One wanted all data protected, but was most concerned about operating statistics (schedules 300 and 400 of proposed Form M). This was identified as information that could, when used in combination with other financial information, be used by competitors to the detriment of the reporting carrier. That is, the units of operation are most sensitive because they allow calculation of such items as revenue per mile and cost per mile.

By contrast, some other commenters pointed to the need for individual carrier data. They stated that the reports enable not only the government but also non-governmental entities to review the financial status of the motor carriers. This helps ensure that those carriers who are most likely to create safety risks are subject to oversight and evaluation. Some representatives and associations of insurance companies stated that they use reports to ascertain and evaluate the financial condition of insured and applicant motor carriers. They also state that this type of information is not generally available otherwise. A motor carrier supported continued availability, saying the information is pro-competitive, as it allows the public to monitor the profile of motor carriers. Furthermore, markets, including the motor carrier industry, operate most efficiently in the light of adequate competitive information. Without this essential data, shippers would have diminished ability to compare carriers, and carriers would have less incentive to benchmark their operations. Another commenter pointed out that the financial information is useful to shippers, who are concerned about the financial well-being of carriers they use.

Confidentiality—Proposal

The goal of the Final Rule is to determine what data items to collect. BTS had to balance user needs with the burden the data collection places on respondents and strike this balance within the guidelines and restrictions of the ICCTA. In this Supplemental Notice of Proposed Rulemaking, BTS seeks to strike a similar balance and again within the confines of the ICCTA. Data users need access to data, often at the individual carrier level. Respondents face the burden of having data they believe are proprietary and sensitive made available to competitors, shippers, and the public.

To protect carriers from any potential harm, BTS could either eliminate sensitive items from the data collection, withhold carrier reports from public release individually, or withhold some or all data from public release for all carriers. BTS proposes to use a combination of these approaches. The Final Rule will reduce the data items we collect to those that are most important. It also allows individual carriers to assert competitive harm with respect to their circumstances. This proposal would, to the extent allowed by law, protect for all carriers the most sensitive of the information that is collected under the revised forms. The proposal also includes a provision for releasing individual carrier data in certain circumstances, to ensure continued access for key uses.

The new rules would limit access to the following data items on the report forms: all of the Operating Statistics data items, the Cost column of the Revenue Equipment data items, and the Total Compensation and Hours Earned or Miles Operated columns of the Employment Information data items. We believe this is information that is generally kept confidential by motor carriers and not voluntarily disclosed to

[2] *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974).

shippers and competitors. Furthermore, these data elements of operating information are those most likely to result in substantial competitive harm for carriers if released. This information would be given a three year confidentiality period, which is the amount of time confidential business information is to be withheld from public release under the ICCTA. Furthermore, three years is long enough to greatly diminish the harmful potential of the data.

Summary data that do not identify individual carriers may be released any time. In addition, individual carrier data withheld from public disclosure may be released by BTS to: (1) Other components of DOT for their internal use only; and (2) such persons and in such circumstances as the Department of Transportation determines to be in the public interest or consistent with the Department's regulatory functions and responsibilities. Examples of uses that would likely receive access to data restricted under this proposal include those aimed at improving motor carrier safety or research evaluating policy questions such as the impacts of changes to the driver hours of service regulations. The user would have to state its intended use and agree to abide by BTS's disclosure rules related to the restricted data. Uses that would likely not receive access include individual carriers or shippers seeking to improve their competitive position. There is no absolute guarantee that this information can be withheld from disclosure if requested under the Freedom of Information Act. If such requests are filed, they would be dealt with on a case-by-case basis.

Certain financial and operating information submitted to BTS by air carriers have been accorded confidential treatment under similar guidelines and the system has worked quite well. (*See* 14 CFR 298.62(d) and 14 CFR part 241 sections 19–6, 19–7 and 22). A similar system is likewise used by the Surface Transportation Board regarding the rail waybill data it collects (*see* 49 CFR 1244.8) and DOT's National Highway Traffic Safety Administration in its class determinations of confidentiality in certain circumstances (*see* 49 CFR 512.10 and appendix B to 49 CFR part 512).

Effects of the Proposed Revisions

These proposed rules, in combination with the Final Rule, are designed to minimize any potential detrimental affects of public access to individual carrier data to the extent possible under law. The changes incorporate aspects of the three major suggestions made by commenters favoring greater protection. The new rules significantly reduce the number and detail of data items class I carriers are required to report. The proposed rules would restrict access to individual carrier data for those data items that are most sensitive. Carriers will still be able to claim that, despite the shortened report form and protection of the most sensitive data items, in their situation competitive harm still result. That is, a carrier will be able to request that BTS further restrict public access to its report or request that BTS waive the reporting requirements altogether.

BTS also notes that the data collection benefits carriers as they are a large component of the data users. The data users will benefit from the changes as BTS retained reporting of key information in the Final Rule and is preserving access to data to meet most needs. First, users will have access to most of the data at the individual carrier level. Second, where individual carrier data are needed for one of the broad listed uses, the user will also have access. Third, all users will have access to all data at an aggregate level. Fourth, they will have access to all data after three years.

III. Request for Comments

The goal of this proposed rulemaking is to reach an equitable and practical balance, within the context of the ICC Termination Act of 1995, between access and confidentiality. It presumes that a certain set of data is likely to be commercially sensitive and creates a system designed to protect against the potential for competitive harm to carriers while permitting access for principal uses. The issue of protecting classes of data was not directly discussed in the earlier NPRM and BTS did not seek comment on it. Nor has the public had a chance to comment on the details of the system we are currently proposing. Therefore, BTS is issuing this SNPRM and requests comments concerning the above revisions to the public availability of the information collected in motor carrier report Forms M and QFR. Among other topics, you may wish to address one or more of the following: (1) Would public availability of the identified data items be likely to cause substantial competitive harms and why or why not; (2) are there other data items that are confidential and public release of them would either cause substantial competitive harm or would impair an important government interest; (3) what changes, if any, need to be made to the proposal to ensure that the ICCTA's goal of providing information for listed uses is fulfilled.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore is not reviewed by the Office of Management and Budget.

This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). It would not affect reporting burden and would have no economic impact. If anything, it would reduce the burden on motor carriers by protecting sensitive information from public release.

The major beneficiaries of the data collection are the federal government, the motor carrier industry, industry associations, transportation investment analysts, transportation research analysts, and motor carrier safety analysts. The program provides data that are used in developing the national accounts, data for monitoring industry trends, and data useful to the public and private sectors regarding the operation and health of the trucking industry and individual carriers.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), BTS must consider whether a final rule would have a significant economic impact on a substantial number of small entities. The definition of ''small business'' is contained in the Small Business Administration's small business size standard regulations. For motor carriers of property, small businesses are those with annual receipts of up to $18.5 million. Under the current classification, there are about 2,800 reporting carriers of which an estimated 2,180 (or 78 percent) are small businesses (all class II carriers and 31 percent of class I carriers are classified as small businesses). The proposed changes will not affect reporting burden for any reporting carriers. Instead they would reduce the burden on motor carriers by protecting sensitive information from public release. In addition, the changes would not impose any new regulatory requirements, directly or indirectly, on small entities. Therefore, I certify this proposal if adopted would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

In this SNPRM, no changes are being proposed to either Form M or Form QFR.

Other Determinations

BTS has analyzed this action for the purposes of the National Environmental Protection Act. It will not have a significant impact upon the quality of the human environment or the conservation of energy resources. Accordingly, an Environmental Impact Statement is not required. BTS has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism'') and determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule. Similarly, because this action does not create an unfunded Federal mandate on state, local or tribal governments, the requirements of section 1(a) of Executive Order 12875, Enhancing Intergovernmental Partnerships, do not apply. This action does not have potential takings implication under Executive Order 12630 because it does not authorize any takings. In accordance with Executive Order 12630, regarding Governmental Action and Interference with Constitutionally Protected Property Rights, BTS finds that this SNPRM implicates no takings, in that it does not propose or implement licensing, permitting, or other conditions, requirements, or limitations on private use, nor does it require dedications or exactions from owners of private property. BTS has reviewed this action in accordance with Executive Order 12988, Civil Justice Reform, and has determined that this action meets the applicable standards provided in section 3(b) of the Executive Order. Nor does this action require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks.

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 number 2139–AA05 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 1420

Motor carriers, Reporting and classification.

Proposed Rule

Accordingly, the Bureau of Transportation Statistics proposes to amend 49 CFR part 1420 Reports of Motor Carriers, as follows:

PART 1420—REPORTS OF MOTOR CARRIERS

1. The authority citation for part 1420 continues to read as follows:

Authority: 49 U.S.C. 14123.

2. In § 1420.10, paragraph (c) is redesignated as paragraph (d).

3. Section 1420.10 is amended by adding paragraph (c) to read as follows:

§ 1420.10 Public release of motor carrier of property data.

* * * * *

(c) *Exceptions relating to certain operating information.*

(1) The following data items contained in annual report Form M or quarterly report Form QFR shall be withheld from public release for a period of three years after the report's due date: all of the Operating Statistics data items, the Cost column of the Revenue Equipment data items, and the Total Compensation and Hours Earned or Miles Operated columns of the Employment Information data items.

(2) Except as provided in paragraph (b) of this section, individual carrier financial data withheld from public disclosure may be disclosed by BTS to such persons and in such circumstances as BTS determines to be in the public interest or consistent with the Department of Transportation's regulatory functions and responsibilities.

(3) This paragraph applies to annual reports covering 1998 and later years, and quarterly reports beginning with the first quarter of 1999.

* * * * *

Ashish Sen,

Director, Bureau of Transportation Statistics.

[FR Doc. 99–6850 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990226056–9056–01; I.D. 122498C]

RIN 0648–AL31

Northeast Multispecies Fishery; Amendment 9 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP). This amendment would add Atlantic halibut to the species managed under the Northeast Multispecies FMP, implement measures to rebuild halibut and stocks of winter flounder, and implement new or revised overfishing definitions and revised specifications of optimum yield for 12 groundfish species. This rule proposes: The addition of Atlantic halibut to the species managed under the Northeast Multispecies FMP and a one-fish halibut possession limit with a minimum size of 36 inches (66 cm); an increase of one inch in the minimum size of winter flounder; postponement of the Vessel Monitoring System (VMS) requirement beyond May 1, 1999; a modification of the framework process to allow for aquaculture projects and changes to the overfishing definitions; and a prohibition of brush-sweep trawl gear when fishing for multispecies. The intent of Amendment 9 is to eliminate overfishing and rebuild many of the groundfish stocks.

DATES: Comments are invited through May 3, 1999.

ADDRESSES: Comments on proposed Amendment 9 to the FMP, and its supporting documents should be sent to Jon C. Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Multispecies Plan.''

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Acting Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of proposed Amendment 9, its Regulatory Impact Review, and the Final Environmental Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Route 1), Saugus, MA 01906–1097.

Copies of the Initial Regulatory Flexibility Analysis (IRFA) are available from the Jon C. Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Comments regarding the IRFA should be sent to the Acting Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) developed Amendment 9 primarily to address the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA) on October 11, 1996. NMFS published a notice of availability for Amendment 9 in the **Federal Register** on January 5, 1999 (64 FR 471), soliciting public comments on the amendment through March 8, 1999. All comments received by the end of that comment period on the proposed amendment, whether specifically directed to the amendment or to this proposed rule, will be considered in the approval/disapproval decision on the amendment. Public comments must have been received (not postmarked or otherwise transmitted, including faxes) by the close of business on March 8, 1999, to be considered in the approval/disapproval decision. Comments received after March 8, 1999, but before the end of the comment period for this proposed rule (May 3, 1999), will not be considered in the approval/disapproval decision of the amendment, but will be addressed in the final rule.

In February 1998, the Multispecies Plan Development Team (PDT) met to review the new SFA requirements and the list of overfished groundfish stocks submitted in NMFS' September 1997 ''Report to Congress,'' to develop recommendations for the Council on the required reductions to stop overfishing. Referring to the December 1997 Report of the Multispecies Monitoring Committee as its primary source of information, the PDT noted that overall nominal effort and exploitation rates had declined for all the stocks identified in this amendment as overfished except halibut. The PDT commented that this was primarily due to measures implemented under Amendment 5 (59 FR 9872, March 1, 1994) and Amendment 7 (61 FR 27710, July 1, 1996) to the FMP. The PDT also commented that additional reductions proposed to take effect under the May 1998 annual adjustment, Framework Adjustment 25 (63 FR 15326), would likely result in further declines.

Amendment 7 (61 FR 27710) established a procedure for setting annual target total allowable catch (TAC) levels for specific cod, haddock, and yellowtail flounder stocks, and an aggregate TAC for the combined stocks of the other regulated species. Under this annual framework adjustment process, TAC levels are set to attain a fishing mortality rate that allows the principal stocks to rebuild to minimum biomass thresholds over time, and to maintain current potential yield for the other regulated species. Although the intent of the management program established under Amendment 7 is to rebuild stocks of cod, haddock, and yellowtail flounder, other multispecies stocks benefit from measures imposed as well. Except for Georges Bank haddock, rebuilding to the Amendment 7 thresholds was expected to take 10 years or less. Georges Bank haddock had a 50-percent probability of being rebuilt within 12 years. Because this annual adjustment provides a process to review new information, either through assessments or trawl surveys and landings data, it ensures a safety mechanism against increases in effort. Therefore, based on measures currently in place and the assurance of an annual adjustment process to address any new information, the PDT recommended that additional measures to reduce fishing mortality rates were not needed at this time.

Due to insufficient information, the PDT was unable to determine the status of the halibut stock, but noted that it was severely depleted by historical standards. Given this, the PDT's recommendation to the Council was to reduce fishing mortality for halibut to as close to zero as possible. This rule would implement a one-fish possession limit and set a minimum fish size of 36 inches (66 cm). This limit is intended to stop directed fishing on halibut without requiring wasteful discarding of vessels that incidentally catch an occasional halibut.

Early in the development of Amendment 9, the Council adopted the Atlantic States Marine Fisheries Commission's (ASMFC's) more restrictive rebuilding goal for winter flounder ($F^{40\neq}$ as compared with the current overfishing definition in the FMP of $F^{20\neq}$). At its meeting, the PDT reviewed the ASMFC's most recent winter flounder assessment and, although this information was preliminary, the PDT noted that, if ASMFC's more restrictive management objective is to be met, additional measures were likely needed for the Southern New England/Mid-Atlantic winter flounder stock. To help achieve this goal, this rule proposes a 13-inch (33 cm) minimum fish size for winter flounder.

Because of the significant revisions to National Standard 1, the Council, with the Mid-Atlantic Fishery Management Council, convened an Overfishing Definition Review Panel to review existing overfishing definitions for compliance with the new SFA requirements. At its June 24–25, 1998, meeting, the Council adopted the Review Panel's recommendations, including control rules that specify a fishing mortality strategy to promote rebuilding. Amendment 9 would implement new and revised overfishing definitions for stocks of cod, haddock, pollock, redfish, white hake, yellowtail flounder, windowpane flounder, winter flounder, American plaice, witch flounder, Atlantic halibut, and ocean pout. It is the intent of the Council to address the established control rules during the annual framework adjustment process.

Measures of Concern

NMFS specifically invites public comment on the proposed indefinite postponement of the mandatory use of VMS by multispecies vessels that possess an individual days-at-sea (DAS) allocation permit (Individual DAS, Large Mesh Individual DAS, and Combination Vessel (for multispecies only) permit categories). The mandatory use of VMS by individual DAS vessels was originally implemented under Amendment 5. However, at that time, the Administrator, Northeast Region, NMFS (Regional Administrator) authorized the alternative call-in system as the method of notification for these vessels, until the VMS was determined to be operable. Although the operational date was determined as the beginning of the 1998 fishing year, a measure implemented under the May 1998 annual adjustment (Framework Adjustment 25) postponed mandatory usage for an additional year to provide time for the Council to address comments and issues raised by members of the public. The Council proposed an indefinite postponement of VMS implementation under this action because it believed that more time was needed to resolve several outstanding issues and questions raised by the

public. A major concern identified is equity among permit categories. With the layover requirement for Fleet DAS vessels eliminated under Amendment 7, the Council believes that DAS permit categories have become less distinguishable and questions why individual DAS vessels are subjected to a VMS requirement, while other DAS permitted vessels are not. While the original (Amendment 5) application of the VMS was solely to track DAS on individual DAS vessels, the Council also considers VMS to be a useful device to monitor area location based on experience with prior implementation of the VMS requirement in the Atlantic sea scallop fishery and on an experimental basis in the Northeast Multispecies fishery. The Council believes that limiting VMS to just individual DAS vessels (a category representing only a small proportion of the overall DAS vessels) compromises this monitoring tool. Other issues raised consist of general cost uncertainties for several issues associated with VMS, including cost control issues inherent with only one certified vendor (as is currently the case), efficacy of VMS hourly tracking (as opposed to recording DAS usage by minute), especially regarding per-day trip limits and enforcing closed areas or transit provisions, and the inability of some vessels to continuously run their VMS units.

Although removal of the fleet DAS lay-over requirement in Amendment 7 did remove one principal difference between Fleet and Individual DAS vessels, a major distinction between the two permitted vessel categories remains, and that is the fact that Individual DAS vessels tend to fish their DAS at a much higher rate, on average, than do Fleet DAS vessels. For example, of the vessels that called into the DAS program in fishing years 1996 and 1997, Individual DAS category vessels fished approximately 86 percent and 84 percent of their DAS, respectively, while Fleet DAS vessels fished roughly 27 percent and 42 percent, respectively. Furthermore, NMFS believes that the Council has had ample time to address the public's issues of concern. For these reasons, NMFS is considering disapproving VMS postponement for vessels that have an individual DAS allocation and, therefore, is seeking specific comment on this issue.

Other Measures

For Atlantic halibut, Amendment 9 proposes to include Atlantic halibut in the Northeast Multispecies fishery management unit. This proposed rule would establish a one-fish possession limit for commercial and recreational vessels and sets a minimum fish size of 36 inches (66 cm). Because halibut would be included under the NE Multispecies FMP, commercial and charter/party vessels would be required to possess an appropriate open access multispecies permit. As is the case for other groundfish species, non-charter/party recreational vessels would not be required to possess a permit and would be prohibited from selling their catch. To facilitate collection of additional information on halibut, NMFS would request multispecies permitted vessels to voluntarily include on their mandatory Vessel Trip Reports the estimated length and time of day for each halibut caught, whether or not the fish are retained.

For winter flounder, this proposed rule would increase the minimum fish size from 12 inches (30.5 cm) to 13 inches (33.0 cm) for both commercial and recreational vessels. The intent of this measure is to increase the age at which winter flounder are first captured. Industry members have commented that southern winter flounder are generally smaller than in the north and that an increased fish size would create regulatory discards. Under the current regulations, net vessels fishing for regulated multispecies are required to fish with a minimum mesh size of either 6-inch (15.24-cm) diamond or 6-inch (15.24-cm) square mesh nets, or, when fishing in the Mid-Atlantic Regulated Mesh Area, 5½-inch (13.97-cm) diamond or 6-inch (15.24-cm) square mesh nets. Many fishers acknowledge that, when fishing for flounders, they fish with nets of 6-inch (15.24-cm) square mesh. In proposing this measure, the Council believes, and NMFS agrees, that an increased winter flounder minimum fish size provides an incentive for industry to fish with diamond mesh rather than square mesh, since diamond mesh releases a higher proportion of juvenile and sub-legal sized flatfish. It also would reduce any incentive for using net liners. Since it takes approximately 9 months for southern winter flounder to grow one inch, increasing the minimum fish size would create a short-term economic loss in this area. However, NMFS anticipates that within one year increased yield per recruit and a likely higher price per pound would offset any short term losses.

This proposed rule would prohibit the use of brush-sweep trawl gear, also known as ''streetsweeper'' gear, by vessels fishing for or possessing multispecies finfish. A relatively new gear modification, brush-sweep trawl gear consists of rubber discs and bristle brushes that modify the footrope in such a way to make it lighter and more flexible than conventional rockhopper and roller gear. Unlike conventional modifications to the gear, brush-sweeps bring the entire trawl sweep in contact with the ocean floor and, thus, greatly improve the efficiency of the trawl. Users of this gear modification comment that efficiency is realized because their nets ''hang-up'' less and, therefore, require less repair, saving time. Time conserved in the multispecies fishery compromises the effectiveness of the DAS reduction program. By allowing this gear to continue, additional management measures would be needed to ensure that the FMP remains conservation neutral. Therefore, because of this compromised effectiveness, and the concern expressed by industry that this gear modification would only escalate, this rule proposes to prohibit the brush sweep gear modification as a precautionary step. The Council has suggested that it may consider lifting this prohibition in the future if it can be proven that this gear does not significantly increase catch per unit effort or overall efficiency as compared with other gear modifications.

This proposed rule would modify the current framework adjustment process by allowing expedited rulemaking for aquaculture projects and changes to the multispecies overfishing definitions. For aquaculture projects, this measure would allow the Council to make recommendations on adjustments or additions to management measures from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring and reporting requirements, permit restrictions, area closures, establishment of special management zones, and any other management measure currently included in the FMP. This measure would also allow the Council to modify overfishing definitions through the framework adjustment process as new scientific information becomes available warranting such a revision.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Office of Management and Budget has determined that this rule is significant for the purposes of E.O. 12866.

NMFS prepared an IRFA for this proposed rule, pursuant to 5 U.S.C. 603, without regard to whether the proposal would have a significant impact on a substantial number of small entities. Measures analyzed in the IRFA include the brush-sweep trawl gear prohibition, the one-fish halibut possession limit, and the winter flounder fish size increase. The following is a brief discussion of the measures analyzed in the IRFA.

Amendment 9 would prohibit possessing brush-sweep trawl gear while in the possession of NE multispecies and fishing for, landing, or possessing NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters. The cost of the brush-sweep trawl gear is estimated to be between $8,000 and $15,000, depending on the individual vessel. Excessive wear and tear on the gear requires that it be replaced often. The overall cost to vessels impacted by this action would be based on the loss of the use of the gear which, when utilized, wears out in a few months to a year. The potential universe of vessels that could be impacted by the brush-sweep trawl gear prohibition is approximately 900 vessels, i.e., the number of permit holders based on NMFS Regional Office database that fish for multispecies with otter trawl gear. Therefore, the one-time cost to the industry would likely be between $7.2 million (900×$8,000) and $13.5 million (900×$15,000) since there are approximately 900 vessels that fish for multispecies with otter trawl gear. This assumes that all 900 vessels are currently using brush sweep gear. NMFS is seeking information on the number of vessels fishing with brush sweep trawl gear.

A one-fish halibut possession limit with a minimum fish size of 36 inches is also proposed. Commercial vessels wishing to retain a halibut under this possession and size limit would be required to obtain a multispecies permit. The economic costs associated with the proposed halibut restrictions include lost revenues from restricted or prohibited landings, as well as the added costs of enforcing new regulations and administering the new open-access permits. For years 1996 and 1997, Vessel Trip Reports indicate that 134 and 139 vessels, respectively, reported landing halibut. Based on recent landings data reported to NMFS, halibut landings have averaged less than 50,000 pounds, and more recently have declined from 31,542 pounds in 1996 to 17,078 pounds in 1997. Annual landings per vessel averaged 235 pounds in 1996 and 123 pounds in 1997. Annual revenues per vessel during this time averaged $1,059 and $553, respectively. The total exvessel revenue from halibut was $141,906 (134×$1,059) in 1996 and $76,867 (139×$553) in 1997.

The number of vessels affected by the proposed one-fish halibut possession limit may amount to 1,050 vessels based on the number of permitted vessels in the multispecies fishery. This number includes active limited access multispecies permit holders (1,000) combined with a subset of one-half the estimated 100 active participants in the directed halibut fishery that do not possess a Federal fisheries permit. Active vessels (those that reported landings of halibut in recent years) are estimated to be only those vessels that caught at least one halibut (134–139 vessels) in 1996 or 1997.

An increase in the minimum fish size for winter flounder to 13 inches from the current minimum size of 12 inches for both commercial and recreational fishing vessels is proposed in Amendment 9. For the commercial fishery, economic impacts of increasing the winter flounder fish size involve revenue loss from prohibiting landings of fish that are between 12 and 13 inches and revenue gains from the increased yield per recruit and price per pound for higher market category once 12-inch fish grow to 13 inches and above.

The NMFS data show 1997 winter flounder landings, including all sizes of fish, approximately 11.7 million pounds, or 14 percent of the total regulated species landings. Exvessel revenues of winter flounder during this period amounted to $15.6 million (8.5 percent) of the total exvessel revenues ($183.5 million) from all species for vessels that landed winter flounder. Although some fishers have commented that fish in the 12–13 inch size range accounted for up to 30–40 percent of their winter flounder catch, many other fishers have reported that very few fish in the 12–13 inch range are retained by nets unless the vessel is fishing with nets that are less than the minimum regulated mesh size. Landings reports from the New Bedford, MA auction indicate that 12 inch fish make up less than 10 percent of winter flounder sold in this port. Assuming that 30–40 percent of winter flounder landed were in the 12–13 inch size range, the decrease in exvessel revenue would likely be between 2.6 percent ($4.68 million of $183.5 million) and 3.4 percent ($6.24 million of $183.5 million) in the first year for all vessels that reported landings of winter flounder.

Compliance costs associated with increasing the minimum winter flounder fish size would result from the cost of modifying trawl codends to reduce the bycatch of 12-inch fish. However, because codends are expandable and replaced often due to constant wear and tear, annual costs associated with this measure would be part of normal gear replacement cost.

Approximately 1,650 vessels have limited access permits and could land winter flounder regardless of whether it was the target species. Based on the NMFS 1997 landings data, 971 of the active multispecies vessels landed winter flounder. On average, gross revenue per vessel would likely be reduced between $4,820 and $6,430 in the first year, assuming uniform landings across vessels. Otter trawl vessels accounted for the majority of the landings (64 percent), followed by gillnet vessels (18 percent). Thus, otter trawl vessels could lose between $3.0 million and $4.0 million in the first year. Gillnet vessels could lose between $0.8 million and $1.1 million in the first year.

NMFS seeks comments regarding the IRFA. In particular, NMFS is seeking information on the number of vessels using brush sweep trawl gear, the number of vessels currently fishing for halibut, and the number of vessels impacted by the increase in the winter flounder fish size. Copies of the IRFA are available (see **ADDRESSES**).

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

This rule contains information collection requirements subject to the PRA and which require OMB approval. The rule restates requirements concerning the installation of a vessel tracking system, documentation of installation of a vessel tracking system, declarations of a vessel being in or out of a fishery, and call-in systems. The requirement for installation of vessel tracking systems has been approved by OMB under control number 0648–0307, with an estimated response time of 1 hour. The other requirements have been approved by OMB under control number 0648–0202, with an estimated response time of 2 minutes for each requirement.

The contents of this rule also affect two other information collection

requirements. The requirement that a vessel must have a NE multispecies permit in order to land or possess one halibut will subject additional persons to the existing permit requirement approved under OMB number 0648–0202. Those persons who are newly subject to the permit requirement will also automatically be subject to the requirement that permit holders submit Vessel Trip Reports, a requirement which has been approved under OMB number 0648–0212. Requests have been submitted to OMB for the expanded coverage of these requirements. The estimated response time for these requirements is 35 minutes for the permit and 5 minutes per day for the logbook entries beyond those made in vessel logbooks as part of normal fishing operations.

The estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of this agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 18, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definitions for ''Nonregulated multispecies'' and ''Northeast (NE) multispecies or multispecies'' are revised and the definition for ''Brush sweep trawl gear'' is added to read as follows:

§ 648.2 Definitions.

* * * * *

Brush-sweep trawl gear means trawl gear consisting of alternating roller discs and bristle brushes that are strung along cables, chains, or footropes, and aligned together to form the sweep of the trawl net, designed to allow the trawl sweep to maintain contact with the ocean floor, or any modification to trawl gear that is substantially similar in design or effect.

* * * * *

Nonregulated multispecies means the subset of Northeast multispecies that includes silver hake, red hake, ocean pout, and Atlantic halibut.

Northeast (NE) multispecies or multispecies means the following species:

American plaice—*Hippoglossoides platessoides.*
Atlantic cod—*Gadus morhua.*
Atlantic halibut—*Hippoglossus hippoglossus.*
Haddock—*Melanogrammus aeglefinus.*
Ocean pout—*Macrozoarces americanus.*
Pollock—*Pollachius virens.*
Redfish—*Sebastes fasciatus.*
Red hake—*Urophycis chuss.*
Silver hake (whiting)—*Merluccius bilinearis.*
White hake—*Urophycis tenuis.*
Windowpane flounder—*Scophthalmus aquosus.*
Winter flounder—*Pleuronectes americanus.*
Witch flounder—*Glyptocephalus cynoglossus.*
Yellowtail flounder—*Pleuronectes ferrugineus.*

* * * * *

3. In § 648.10, paragraphs (b) and (d) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification.* (1) Scallop vessels issued a full-time or part-time limited access scallop permit, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VMS notification of this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit that meets those criteria. If a vessel has already been issued a limited access permit without providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and to provide documentation of such installation to the Regional Administrator. Vessels that are required to or have elected to use a VMS unit shall be subject to the following requirements and presumptions:

(i) Vessels that have crossed the VMS Demarcation Line specified under paragraph (a) of this section are deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop or NE multispecies fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port.

(ii) Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for vessels that are under the VMS notification requirements of this paragraph (b) begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port.

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(1)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS system.

(2) Upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that multispecies vessels issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Administrator at the time of application for these permits that the vessel has an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without providing such

documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and to provide documentation of such installation to the Regional Administrator. Vessels that are required to use a VMS unit shall be subject to requirements and presumptions described under paragraphs (b)(1)(i) through (b)(1)(v) of this section.

* * * * *

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. Multispecies vessels issued an Individual DAS or Combination Vessel (regarding the multispecies fishery) permit are authorized to use the call-in system of notification specified in paragraph (c) of this section, unless otherwise notified as specified in paragraph (b)(2) of this section.

* * * * *

4. In § 648.14, paragraphs (b), (c)(1), (d)(1), (e) and (g)(2) are revised, and paragraphs (a)(116), (a)(117) and (c)(26) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(116) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(117) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(3), to land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b) and (c), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) * * *

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

* * * * *

(26) Possess or land per trip more than the possession or landing limit specified under § 648.86(c) if the vessel has been issued a multispecies permit.

(d) * * *

(1) Possess, at any time during a trip, or land per trip, more than the possession limit of NE multispecies specified in § 648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in § 648.89.

* * * * *

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of NE multispecies specified in § 648.88(c), or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.

* * * * *

(g) * * *

(2) Possess cod, haddock, and Atlantic halibut in excess of the possession limits specified in § 648.89(c).

* * * * *

5. In § 648.80, paragraph (g)(4) is added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(g) * * *

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

* * * * *

6. In § 648.83, paragraph (a)(1) is revised to read as follows:

§ 648.83 Minimum fish sizes.

(a) * * * (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

Species	Size (inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	13 (33.0 cm)
Redfish	9 (22.9 cm)

* * * * *

7. In § 648.86, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(c) *Atlantic halibut.* A vessel issued an NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut, provided the vessel complies with other applicable provisions of this part.

(d) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

8. In § 648.88, paragraphs (a)(1), (b), (c) and (d) are revised to read as follows:

§ 648.88 Open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, and unlimited amounts of the other NE multispecies, per trip, provided that it does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

(b) *Charter/party permit.* A vessel that has been issued a valid open access multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species and one Atlantic halibut when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated multispecies permit.* A vessel issued a valid open access nonregulated multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the

other nonregulated multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

9. In § 648.89, paragraphs (b)(1) and (c) are revised to read as follows:

§ 648.89 Recreational and charter/party restrictions.

* * * * *

(b) * * * (1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, may not retain fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

Species	Size (inches)
Cod	21 (53.3 cm)
Haddock	21 (53.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	13 (33.0 cm)
Redfish	9 (22.9 cm)

* * * * *

(c) *Possession restrictions*—(1) *Cod and haddock.* Each person on a recreational vessel may possess no more than 10 cod and/or haddock, combined, in, or harvested from, the EEZ.

(i) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(ii) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(iii) Cod and haddock must be stored so as to be readily available for inspection.

(2) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

* * * * *

10. In § 648.90, paragraphs (b) introductory text and (b)(1) are revised to read as follows:

§ 648.90 Framework specifications.

* * * * *

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Northeast Multispecies FMP, to address gear conflicts as defined under § 600.10 of this chapter, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets which form the basis for selecting specific management measures.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and an opportunity to comment on them prior to, and at, the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP. The Council's recommendation on adjustments or additions to management measures for the purposes of facilitating aquaculture projects must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other management measures currently included in the FMP.

* * * * *

[FR Doc. 99–7088 Filed 3–18–99; 4:10 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 55
Tuesday, March 23, 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

Animal and Plant Health Inspection Service

[Docket No. 99–010–1]

AgrEvo USA Co.; Extension of Determination of Nonregulated Status for Corn Genetically Engineered for Male Sterility and Glufosinate Herbicide Tolerance as a Marker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional corn transformation event our determination that a corn transformation event developed by AgrEvo USA Company, which has been genetically engineered for male sterility and glufosinate herbicide tolerance as a marker, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by AgrEvo USA Company in its request for an extension of a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of an environmental assessment and finding of no significant impact.

EFFECTIVE DATE: April 22, 1999.

ADDRESSES: The extension request and an environmental assessment and finding of no significant impact may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On December 15, 1998, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 98–349–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, for corn designated as transformation event MS6 (event MS6), which has been genetically engineered for male sterility and glufosinate herbicide tolerance as a marker. The AgrEvo request seeks an extension of a determination of nonregulated status issued for corn transformation event MS3, the antecedent organism, in response to APHIS petition number 95–228–01p (61 FR 9142–9143, March 7, 1996, Docket No. 95–076–2). Based on the similarity of corn event MS6 to the antecedent organism, AgrEvo requests a determination that male sterile and glufosinate tolerant corn event MS6 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

Analysis

Like the antecedent organism, corn event MS6 contains a *barnase* gene derived from *Bacillus amyloliquefaciens* and a *bar* gene derived from *Streptomyces hygroscopicus.* The *barnase* gene encodes an enzyme that inhibits pollen formation and results in male sterility of the transformed plants. The *bar* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme that confers tolerance to the herbicide glufosinate. Linkage of the *barnase* gene, which induces male sterility, with the *bar* gene, a glufosinate tolerance gene used as a marker, enables selection of the male sterile line independent of plant growth stage. Expression of the added genes is controlled in part by gene sequences derived from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens.* While corn event MS6 contains fragments of the *bla* marker gene, it was concluded that the fragments would not produce an intact protein in any medium. The particle acceleration method was used to transfer the added genes into the parental corn inbred line H99.

Corn event MS6 and the antecedent organism were genetically engineered using the same transformation method, with the same gene that makes the plants sterile and the same marker gene, and using the same parental inbred line. Accordingly, we have determined that corn event MS6 is similar to the antecedent organism in petition 95–228–01p and, therefore, should no longer be regulated under the regulations in 7 CFR part 340.

The subject corn event has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of this corn event conducted under APHIS notifications since 1997 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of its environmental release.

Determination

Based on an analysis of the data submitted by AgrEvo and a review of other scientific data and field tests of the subject corn event, APHIS has determined that corn event MS6: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than male sterile corn developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that corn event MS6 and any progeny derived from crosses with other corn varieties will be as safe to grow as corn that is not subject to regulation under 7 CFR part 340.

Since APHIS has determined that corn event MS6 does not present a plant pest risk based on its similarity to the antecedent organism, AgrEvo's corn event MS6 will no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject corn event or its progeny. However, importation of corn event MS6 or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that AgrEvo's corn event MS6 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 17th day of March, 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–7077 Filed 3–23–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Meeting.

SUMMARY: The Willamette PAC Advisory Committee will meet on Thursday, April 8, 1999. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 3 p.m. The meeting will be held at the Salem BLM Office; 1717 Fabry Road SE; Salem, Oregon 97306; phone (503) 375–5642. The tentative agenda includes: (1) Subcommittee Report on Mt. Hood Wilderness management proposal, (2) Public Forum, (3) Information presentation on Survey and Manage, (4) Forest Service 25% fund and payments to counties. The Public Forum is tentatively scheduled to begin at 10 a.m. Time allotted for individual presentation will limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may also be submitted prior to the April 8 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: March 17, 1999.

Randy A. Dunbar,

Acting Forest Supervisor.

[FR Doc. 99–7021 Filed 3–22–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Approval of New Information Collection.

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces Rural Business-Cooperative Service's (RBS) intention to request approval of an information collection in support of the Mid- to Upper Level Management and Sales/ Field Representatives Compensation Survey.

DATES: Comments on this notice must be received by May 24, 1999, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Beverly L. Rotan, Agricultural Economist, Rural Business-Cooperative Service, Cooperative Resources and Management Division, USDA, Stop 3253, 1400 Independence Avenue, SW, Washington, DC 20250, telephone number (202) 690–2413 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Title: Mid- to Upper=Level Management and Sales/Field Representatives Compensation Survey.

Type of Request: New Information Collection.

Abstract: Changing agricultural markets, services, new farming techniques/technology (biotechnology, value-added products, etc.) available to cooperatives require them to closely examine methods to identify, attract, and retain the employment of competent, productive employees. The unique nature of the cooperative business requires the services of employees with special skills in addition to their areas of technical expertise. The ''owner is customer'' characteristic of cooperatives requires cooperative employees to have skills in education, communications, governance, and member relations that are not typically required of employees in any other type of business. Subsequently, compensation data on the general business population do not reflect the unique requirements of cooperatives. This study will also serve as a guide to established cooperatives.

RBS has received an increasing number of inquiries from cooperatives, farm organizations (National Council of Farmer Cooperatives (NCFC), University extension agents, etc.), and other interested clientele asking for updated data on employee compensation and comparable salary information for various job categories; with an added interest for cooperative directors' compensation. The most recent investigation into compensation for specified job classification was done in 1991. Before that time the most recent study was done in 1962.

In order to minimize burden on small businesses, an effort was made to identify any other private or government departments which collected data on specific cooperative salaries and benefit packages. After discussions with representatives of the Census Bureau, Population—National Statistics, Bureau of Labor Statistics, and the Bureau of Economic Analysis—Chief of Farm Income, Regional Economic Measurement Division, it was evident that the most relevant data available through these agencies were labor wages aggregated by county. This information isn't specific enough to supply adequate details pertaining to salary ranges, factors involved in setting salaries, and educational background for cooperative employees.

The initial users of the information collected will be managers, directors, and other cooperative leaders and policy makers of cooperatives. New cooperatives will use the resulting report primarily as a guide for setting their cooperative's benefit/compensation packages. Established cooperatives will use the resulting report primarily as a comparison of their present salary/benefit base. The report will also give new cooperatives a basis to evaluate their perspective employees' educational and/or work experience and backgrounds in order to formulate an adequate benefit/compensation package.

Estimate of Burden: Public reporting burden for this collection of information is estimated at .75 hour per survey, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing survey

Respondents: Cooperative managers and human resources personnel.

Estimated Number of Respondents: 300.

Estimated Number of Responses per respondent: 1.

Estimated Total Burden on Respondent: 225 Hours.

Copies of this information collection can be obtained from Jean Mosely, Regulations and Paperwork Management Branch, at (202) 692–0041.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Business-Cooperative Service (RBS), including whether the information will have practical utility; (b) the accuracy of RBS' 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 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. Comments may be sent to Jean Mosely, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may be submitted via the Internet by addressing them to Comments@rus.usda.gov. and must contain the word ''compensation'' in the subject. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 11, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–6998 Filed 3–22–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 1999

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster or are experiencing fundamental structural changes in the economic base.

Not more than 7 percent of the Agency quarterly apportioned guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBANK) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. CAIP loans are subject to a 50 percent limit of the overall CAIP loan program.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: March 23, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business Programs Processing Division, Rural Business-Cooperative Service, USDA, Stop 3221, Washington, DC 20250–3221, telephone (202) 690–3809.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: March 2, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–6997 Filed 3–22–99; 8:45 am]

BILLING CODE 3410–XY–U

COMMISSION ON CIVIL RIGHTS

Consultation Proceeding on the ''Crisis of the Young African American Male in the Inner Cities''

AGENCY: Commission on Civil Rights.

ACTION: Notice of consultation.

SUMMARY: Notice is hereby given that a public consultation before the U.S. Commission on Civil Rights will commence on Thursday, April 15 through Friday, April 16, 1999, daily at 8:30 a.m. in the Holiday Inn,

Congressional Room, located at 415 New Jersey Avenue, N.W., Washington, DC 20001.

The purpose of the consultation is to collect information within the jurisdiction of the Commission, to examine the crisis of the young African American male in the inner cities, in the areas of criminal justice, education, health care, and employment/entrepreneurial opportunies. The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials or equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the consultation and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the consultation.

FOR FURTHER INFORMATION CONTACT: David Aronson, Press and Communications (202) 376–8312.

Dated: March 18, 1999.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–7112 Filed 3–22–99; 8:45 am]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the Iowa Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:00 p.m. on April 21, 1999, at the United Way of Central Iowa, 1111 Ninth Street, Suite 350, Room F, Des Moines, Iowa 50314. The purpose of the community forum is to receive information on Des Moines' New Immigrants.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the community forum and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the community forum.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–7095 Filed 3–22–99; 8:45 am]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:30 p.m. on April 12, 1999, at the Rivier Collage, Dion Center Board Room, 420 Main Street, Nashua, New Hampshire 03060. The Committee will finalize plans for its May 6, 1999, briefing on the status of civil rights in New Hampshire as part of its project, A Biennial Report on the Status of Civil Rights in New Hampshire.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–7096 Filed 3–22–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 11, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from Mexico covering exports of this merchandise to the United States by certain manufacturers (*Oil Country Tubular Goods from Mexico; Preliminary Results of Administrative Review* (''*Mexican OCTG*''), 63 FR 48599). Based on our preliminary review of these exports during the period August 1, 1996 through July 31, 1997, we found no margins for either reviewed company. We invited interested parties to comment on the preliminary results. We received comments and rebuttals from petitioners and from respondent with respect to Tubos de Acero de Mexico, S.A. (''TAMSA''). No comments were received from either party with respect to the other reviewed manufacturer, Hylsa S.A. de C.V. (''Hylsa'') . We have now completed our final results of review and determine that the results have not changed for either respondent.

EFFECTIVE DATE: March 23, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury, or Linda Ludwig, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Room 7866, Washington, DC. 20230; telephone (202) 482–0195 (Drury), or (202) 482–3833 (Ludwig).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at

19 CFR part 351 (62 FR 27296, May 19, 1997).

Background

The Department of Commerce published a final determination of sales at less than fair value for OCTG from Mexico on June 28, 1995 (60 FR 33567), and subsequently published the antidumping duty order on August 11, 1995 (60 FR 41056). The Department of Commerce published a notice of ''Opportunity To Request Administrative Review'' of the antidumping order for the 1996/1997 review period on August 4, 1997 (62 FR 41925). Upon receiving requests for administrative review from two respondents, Hylsa and TAMSA, we published a notice of initiation of the review on September 25, 1997 (62 FR 50292).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On March 19, 1998, the Department extended the time limit for the preliminary results to August 31, 1998. *See Oil Country Tubular Goods from Mexico; Extension of Time Limits for Antidumping Duty Administrative Review* (63 FR 14422, March 25, 1998). On January 11, 1999, the Department extended the time limit for the final results until March 10, 1999. *See Oil Country Tubular Goods from Mexico; Extension of Time Limits for Antidumping Duty Administrative Review* (64 FR 3065, January 20, 1999).

Duty Absorption

On October 2, 1997, Maverick Tube Corporation, Lone Star Steel Company, and IPSCO Tubulars, Inc. requested that the Department determine, with respect to Hylsa, whether antidumping duties had been absorbed during the POR. On October 23, 1997, North Star Steel Ohio requested that the Department determine, with respect to TAMSA, whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review was initiated two years after the publication of the order, we have made a duty absorption determination in this segment of the proceeding.

In this case, both TAMSA and Hylsa sold to the United States through importers that are affiliated within the meaning of section 751(a)(4) of the Act. We determine that there is no dumping margin for either TAMSA's sales or Hylsa's sales during the POR. Since we have determined that there are no dumping margins for the respondents with respect to their U.S. sales, we also determine that there is no duty absorption with respect to those sales.

Scope of the Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Department has determined that couplings, and coupling stock, are not within the scope of the antidumping duty order on OCTG from Mexico. *See* Letter to Interested Parties; Final Affirmative Scope Decision, August 27, 1998.

Period of Review

The review covers the period August 1, 1996 through July 31, 1997. The Department is conducting this review in accordance within section 751 of the Act, as amended.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results of the reviews. We received both comments and rebuttals from petitioners and TAMSA. Because there were no comments concerning our preliminary results with respect to Hylsa, all comments below pertain to TAMSA. The following is a summary of comments.

Comment 1

Petitioners argue that TAMSA should not be granted a constructed export price (''CEP'') offset, as TAMSA neither requested such an adjustment nor provided information to the Department necessary to analyze whether a CEP offset was warranted. Indeed, since TAMSA claimed that its sales were at similar levels of trade, and that the sale to the United States was an export price (''EP'') sale, TAMSA never claimed a CEP offset. The lack of a CEP offset claim by TAMSA, and inadequate information concerning levels of trade, according to petitioners, precludes the Department from granting a CEP offset.

Petitioners begin by pointing out that TAMSA maintained that its sale to the United States was an EP sale, not a CEP sale. Because of TAMSA's steadfast insistence that its sale was not a CEP sale, and its alleged refusal to provide any information which might be used in conjunction with a CEP offset, petitioners maintain that TAMSA is not entitled to the offset.

Even if TAMSA is not required to request a CEP offset, petitioners argue, TAMSA has the burden to establish an entitlement to an offset by providing sufficient information to demonstrate that sales to the United States and home market were at different levels of trade, that it is not possible to make a level of trade adjustment, and that the level of trade in the home market is more advanced than that of the sale to the United States. Citing *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany* (''*German Pipe*'') (63 FR 13217, March 18, 1998), petitioners assert that TAMSA alone was responsible for providing this information and failed to do so. Petitioners note that, in its initial response, TAMSA did not provide any information about different selling functions in the home market and the United States market which the Department could use in making a level of trade determination. Despite repeated requests by the Department in supplemental questionnaires, petitioners contend, TAMSA provided

little or no new information regarding the various selling functions in both markets. Instead, petitioners state, TAMSA continued to maintain that sales in both the home market and United States markets were at the same level of trade, and at no point requested a level of trade adjustment. Despite the fact that TAMSA provided just-in-time (''JIT'') services to PEMEX, its largest customer, and did not provide them to its United States customers, petitioners note that TAMSA never took the position that JIT services were sufficient to create a difference in levels of trade.

Petitioners state that the respondent has the burden of proof to demonstrate that a level of trade adjustment based on price differences is not possible. Petitioners state that TAMSA provided no information to answer this question, and thus the Department's decision in the preliminary results to grant a CEP offset is incorrect. Petitioners believe that the Department did not explain its basis for finding that non-PEMEX sales in the home market were at a different level of trade from the sale to the United States, and that a level of trade adjustment based on price differences is not possible. For all of these reasons, petitioners believe that the Department should not grant a CEP offset to TAMSA.

TAMSA counters that the Department's decision to grant a CEP offset was proper if the Department maintains that the sale by TAMSA to the United States was a CEP sale. TAMSA asserts that it did fully cooperate with the Department and provided the necessary information. Furthermore, TAMSA states that it did, in fact, advise the Department that it had provided sufficient information for a CEP offset, in comments which were provided prior to verification. This information, according to TAMSA, includes a detailed explanation of the various selling functions for each channel of distribution in the home market, as well as for the sale to the United States. TAMSA states that if it meets its burden to provide sufficient information for the Department to determine if there is a more advanced level of trade in the home market, yet provides insufficient information for a level of trade adjustment, then it has nevertheless met the conditions for a CEP offset.

TAMSA states that it has, in fact, met this burden. Concerning the level of trade question, TAMSA states that the information provided to the Department shows that it sold at different levels of trade in the home market and the United States, and that the home market level of trade was more advanced. TAMSA states that, although it initially classified all customers as ''end users,'' it subsequently provided detailed information regarding channels of distribution, selling functions, and other information which clearly establishes different channels of distribution and different selling functions with respect to the two markets. TAMSA further notes that the Department verified the services provided by TAMSA to its customers, including the provision of JIT services in the home market and services provided by Siderca Corp. in the United States. According to TAMSA, this information, which was also verified, is sufficient to establish that the U.S. sale was made at a different level of trade than TAMSA's home market sales.

Regarding the question of whether there is enough information to make a level of trade adjustment, and whether TAMSA cooperated sufficiently in providing such information, TAMSA asserts that the Department found no home market level of trade equal to the level of trade of the United States sale. Consequently, a level of trade adjustment was not feasible.

Department's Position

The question of whether a respondent is entitled to a CEP offset is predicated on a certain pattern of facts. First, there must be a decision that sales to the United States are CEP sales. Second, there must be a determination that there are different levels of trade between the home market and United States, that the home market level of trade is more advanced, and that it is not possible to quantify the price differences related to those sales and different levels of trade to make a level of trade adjustment. Only after these conditions are met can a CEP offset be made.

The Department presented a detailed explanation of the process for determining levels of trade and their proper treatment in the preliminary results of this review. *See Mexican OCTG,* 63 FR 48699. To summarize, the Department examines and compares the distribution systems, including the selling functions, classes of customers, and selling expenses, in the two markets. Further, unless the Department finds that there are substantial differences in selling functions, it will not determine that there are different levels of trade.

The Department's use of this test is well documented. In *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands* (62 FR 18476, April 15, 1997), the Department stated that:

> [t]he existence of different classes of customers, as well as different functions performed by such customers, is not sufficient to establish a difference in the levels of trade. Accordingly, we consider the class of customer as one factor, along with the producer/exporter's selling functions and the selling expenses associated with these functions, in determining the stage of marketing, i.e., the level of trade associated with the sales in question.''

As noted in the preliminary results, we compared sales to unaffiliated customers in the home market to the constructed sales to the importer in the United States. This is consistent with the Department's previous practice. *See Id.* At 18480. In this instance, TAMSA's home market sales to unaffiliated parties are compared to the sale to Siderca Corp., TAMSA's U.S. affiliate. All sales in the home market are to end users, i.e. manufacturers which consume the final product. The sale to Siderca Corp., by contrast, is similar to a sale to a distributor. Siderca Corp. does not consume the product, but rather acts as a reseller. Therefore, the sales in the home market and the U.S. sale appear to be made at different points in the chain of distribution.

With respect to the selling functions, TAMSA provided sufficient information for the Department to compare selling functions in the two markets. Information provided by TAMSA, and verified by the Department, demonstrates that TAMSA's selling functions for home market sales are different than those associated with TAMSA's sale to Siderca Corp.

First, TAMSA provides JIT services to the vast majority of its home market customers. The Department verified the extent and the nature of the expenses associated with JIT services. Also, as TAMSA stated in submitting its chart of selling functions, TAMSA provides customer visits in the home market. Neither of these services was provided in connection with the U.S. sale *to* Siderca Corp. Services provided by Siderca Corp. to end users in the United States are not relevant to this analysis, because the appropriate comparison for LOT purposes is between the ''starting price'' sale to the first unaffiliated customer in the home market, and the constructed export price sale (i.e. the sale *to* Siderca Corp.) in the United States. *See* § 351.412(c) of the Department's regulations. Based on information provided by TAMSA and on the Department's verification, the Department's analysis of the selling functions provided by TAMSA in both the home and U.S. markets indicates that there are selling functions provided in sales to the home market which are not provided in the U.S. market and that

all home market sales are made at a single level of trade.

Based on the facts of the case, the Department finds that sales by TAMSA in the home market are at a different level of trade than the sale to the United States. Sales in the home market are to end-users, while the sale to Siderca Corp. is a sale to a distributor. Furthermore, the provision of JIT services to the vast majority of home market customers, as well as visits to customers, demonstrates that TAMSA's sales in the home market and its sale to Siderca Corp. are characterized by different selling functions. Therefore, the facts on the record indicate that TAMSA's sales were made at different levels of trade.

Next, the Department must determine if the home market level of trade is more advanced than the U.S. level of trade. The Department's analysis of the different selling functions indicates that the home market sales are indeed made at a more advanced level of trade. The home market sales to end users, who are further down the chain of distribution than distributors such as Siderca Corp., and the selling functions provided in the home market, especially JIT services, constitute a far greater level of service and expense for TAMSA than the services provided to Siderca Corp. in connection with the sale to the United States.

Finally, the information on the record indicates that it is not possible for the Department to make a level of trade adjustment. Specifically, because there are no home market sales at the same level of trade as the U.S. sale, it is not possible to quantify the extent to which price differences are due to the level of trade differences.

Given that the home market sales are at a more advanced level of trade, and that it is not possible to make a level of trade adjustment, section 773(a)(7)(B) of the Act directs the Department to make a CEP offset.

The statutory provision is not limited to situations in which a respondent requests such an offset. The record indicates that TAMSA provided sufficient information for the Department to conduct a level of trade analysis and to determine that a CEP offset was appropriate. Thus, petitioners' reliance on the *German Pipe* case is off point. In that case, the respondent did not provide sufficient information either before or during verification for the Department to conduct a level of trade analysis. In the instant case, in contrast, TAMSA provided information prior to verification, and Department officials were able to verify the accuracy of the information during verification.

Thus, based on the facts in the case, we agree with respondent that a CEP offset is warranted if the Department continues to classify the sale to the United States as a CEP sale.

The question of whether the sale is classified properly as a CEP sale is addressed in the next comment.

Comment 2

TAMSA contends that the Department erred in classifying TAMSA's sale to the United States as a CEP sale. Instead, TAMSA maintains that the Department should classify TAMSA's United States sale as an EP sale.

In support of its argument, TAMSA begins by restating the three-prong test that the Department undertakes to determine if sales made through a U.S. affiliate should be classified as CEP sales or ''indirect'' EP sales. The test examines three criteria: (1) Whether merchandise sold to the United States entered into the physical inventory of the affiliate or was shipped directly to the United States customer; (2) whether a direct shipment to the unaffiliated customer was the customary channel of trade, and; (3) whether the affiliate acted only as a processor of documentation and as a communications link between the unaffiliated customer and the producer or exporter. Where one or more of these conditions is not met, the Department treats sales through a U.S. affiliate as CEP sales. Noting that the Department relied on the third prong of the test in rejecting its claim that the sale was an EP sale, TAMSA lists the reasons cited by the Department for its determination that the role of its affiliate, Siderca Corp., was more than ancillary, and argues that Siderca Corp. in fact served only as a document processor and a communications link.

TAMSA denies any suggestion that Siderca Corp. solicited the sale, or in any way negotiated the price of the sale. TAMSA states that the record shows clearly that TAMSA, and not Siderca Corp., set the terms and price for the sale in question. TAMSA cites a number of instances in which it contends that the Department has treated sales as EP sales when the United States affiliate has no authority to set prices or is not in a position to negotiate prices, and states that the fact pattern in this case is consistent with those cases. *See Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys from the Republic of Kazakhstan* (''*Beryllium from Kazakhstan*''), 62 FR 2648 (January 17, 1997); *Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review* (''*Canadian Steel*''), 63 FR 12725 (March 16, 1998), *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea* (''*Wire Rod from Korea*''), 63 FR 40404 (July 29, 1998); and *U.S. Steel Group* v. *United States*, 15 F. Supp. 2d 892 (CIT 1998). Regarding the sales agreement between TAMSA and Siderca Corp., which confers exclusive marketing and sales agency powers on Siderca Corp. with respect to TAMSA products, TAMSA argues that the antidumping duty order rendered this agreement moot with respect to any sales to the United States of subject merchandise.

Furthermore, TAMSA states that Siderca Corp. merely received a request from the U.S. customer, and passed it on to TAMSA in Mexico. TAMSA depicts the role of Siderca Corp. in finalizing the sale as the passive role of a mere conduit for information passing between the U.S. customer and TAMSA during the initial sales process. TAMSA states that Siderca Corp. did not match the order to TAMSA's inventory, did not find a buyer for the merchandise, and did not finalize the sale.

Once the sale terms were finalized, TAMSA asserts, the functions performed by Siderca Corp. were all ''ancillary'' and therefore should not weigh in the decision to treat this sale as a CEP sale. These included paying for certain charges, such as brokerage and insurance, serving as the importer of record, accepting payment, and other such services.

TAMSA concludes by stating that the Department must go beyond a listing of activities and must analyze the various activities involved with the sale. TAMSA contends that the record, properly analyzed, shows that this sale should be treated as an EP sale.

Petitioners respond by stating that the Department's normal practice is to consider a sale made through a U.S. affiliate to be a CEP sale unless the record indicates that all three prongs are met. Petitioners state that Siderca Corp. had more than ancillary or incidental involvement in the U.S. sale and that these activities were sufficient to warrant the Department's treatment of the sale as a CEP sale. Petitioners rely upon *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, Final Results of Antidumping Duty Administrative Review,* (''*Korean Steel*''), 63 FR 13170 (March 18, 1998) and *Stainless Steel Wire Rod from Spain, Final Determination of Sales at Less Than Fair Value,* (''*Wire Rod from Spain*''), 63

FR 40391 (July 29, 1998) in which the Department treated the sales at issue as CEP sales.

Petitioners note in particular that the sales agency agreement between TAMSA and Siderca Corp. names Siderca Corp. as TAMSA's exclusive selling agent in the United States market, and further points out that the terms of the sale and the selling activities performed by Siderca Corp. appear to follow the terms of this agreement. Furthermore, petitioners note that the agreement was extended, without amendment, after the antidumping duty order went into effect.

Petitioners further assert that the contacts between Siderca Corp. and the U.S. customer were consistent with the functions described in the agreement. For example, according to petitioners, the U.S. customer contacted Siderca Corp., not TAMSA, regarding this sale, and Siderca Corp. had exclusive contact with the customer throughout the sales process. Additionally, Siderca Corp. had longstanding and frequent contacts with the customer and worked regularly with it to meet its needs as they arose for a variety of products and services. These contacts and activities, petitioners believe, indicate that Siderca Corp.'s efforts brought about the sale of TAMSA merchandise in the United States.

While not disputing that TAMSA may have set the price for the sale, petitioners reiterate that the selling agreement between TAMSA and Siderca Corp. grants Siderca Corp. certain rights in negotiating and setting prices as part of its work in marketing TAMSA products. Petitioners state that the Department should discount other assertions on the record regarding TAMSA's role in setting the price, and instead should concentrate on the selling agreement.

As for the other functions carried out with respect to this sale, petitioners believe that these activities, taken as a whole, indicate more than ancillary involvement by Siderca Corp. Petitioners urge the Department to consider the range of services and activities in the aggregate, rather than line by line, in making its determination. Petitioners also advise the Department to examine the differences in indirect selling expenses incurred by Siderca Corp. and TAMSA when making its determination on this question.

Finally, petitioners state that it is also doubtful that TAMSA passed the second prong of the CEP test. Petitoners note that, in the original investigation, the merchandise sold to the U.S. was produced to order and the U.S. sales were made through a different U.S. affiliate. Comparing the fact pattern in this review to the one from the original investigation, petitioners find the two to be different and conclude that the current United States sale does not represent the customary commercial channel between the parties involved in the sale. According to petitioners, this sale therefore failed two of the three prongs of the ''indirect EP sale'' test, and the Department should therefore treat this sale as a CEP sale.

Department's Position

Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted.'' Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted.'' When sales are made prior to importation through an affiliated U.S. sales agent to an unaffiliated customer in the United States, our practice is to examine several criteria in order to determine whether or not the sales are ''indirect'' EP sales. Those criteria are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' between the exporter and the unaffiliated U.S. buyer. *See Canadian Steel* 63 FR at 12738. Where all three criteria are met, the Department has regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States where the sales agent performs them, and has determined the sales to be EP sales. Where one or more of these conditions is not met, the Department has classified the sales in question as CEP sales.

In attempting to determine whether a sale should be treated as EP or CEP, the Department looks at the overall role of an affiliate in the sales process. Essentially, the Department wishes to determine whether the affiliate is substantially involved in the sales process. While each of the three prongs addresses this question to some extent, the third prong of the test is the most important with respect to resolving the question. After carefully examining the evidence, the Department believes that the fact pattern indicates clearly that the affiliate, Siderca Corp., played the leading role in the U.S. sale made during this administrative review and was substantially involved in the sales process.

As an initial matter, the selling agreement between TAMSA and Siderca Corp. is quite clear with respect to the services that Siderca Corp. performs. Siderca Corp. is the exclusive selling agent for TAMSA products in the United States and other parts of the world, and has certain rights affecting the price for any sales under the agreement. In exchange for providing marketing and selling functions, and for providing other services, such as paying for brokerage and importer duties, Siderca Corp. is entitled to receive compensation under the agreement. The record indicates that Siderca Corp. did receive, in connection with this sale, the compensation provided for under the agreement, and performed functions for which it is responsible under the agreement.

In addition, Siderca Corp. played the primary role in generating this sale by bringing the customer to TAMSA. The record shows that Siderca Corp. has a longstanding working relationship with the United States customer, is in frequent contact with that customer, and that sales of other TAMSA products to this and other customers occur because of these contacts. Conversely, TAMSA itself appears to have little, if any, contact outside of Mexico with regard to the sale of its products in the United States. Indeed, under the terms of the agreement, TAMSA is precluded from soliciting or negotiating sales directly in the United States. The agreement places the rights and responsibilities of selling and marketing TAMSA products in the United States squarely on Siderca Corp.

Based on this fact pattern, it appears that, contrary to TAMSA's claims, the sale to the United States of subject merchandise was within the framework of the agreement between TAMSA and Siderca Corp. Evidence on the record indicates that, consistent with its rights and responsibilities under the selling agreement, Siderca Corp. maintained contacts with the United States customer and, through these contacts, was able to match that customer's requirements with subject merchandise available from TAMSA. Siderca Corp.

was aware of the existence of the merchandise from a canceled sale that it had previously arranged, and upon receiving the inquiry forwarded it to TAMSA for approval. The fact that Siderca Corp. may not have fully exercised its rights with regards to price negotiation, deferring to TAMSA with respect to the final approval, neither negates the substance and importance of the agreement nor diminishes the importance of Siderca Corp.'s role in arranging this sale. Simply put, under the current agreement, it appears that TAMSA would be precluded from seeking sales in the United States directly. Sales of TAMSA products in the United States must, as a condition of the agreement, begin with Siderca Corp. The fact that Siderca Corp. performed other functions as specified in the agreement, even if these were ancillary services, and received compensation according to the terms of the agreement, reinforces the conclusion that Siderca Corp.'s activities under the agreement were the primary factors in creating the sale to the United States.

The cases cited by both TAMSA and petitioners, when compared with the fact pattern of the case, reinforce the conclusion that this sale should be classified as a CEP sale. In *Wire Rod from Korea*, the Department treated the sales as EP sales because the Department ''(c)onfirmed Changwon's assertions that POSAM (the U.S. affiliate) is not in a position to negotiate, confirm, or reject prices without approval from Changwon'' and ''POSAM * * * did not solicit business on behalf of Changwon'' and ''Changwon itself contacted its potential U.S. customers'' (63 FR at 40418–19). In this instance, in contrast, Siderca Corp. had the authority to negotiate, confirm, or reject prices through its selling agreement. Additionally, the Department determined at the Siderca Corp. verification that Siderca Corp. maintains a sales staff which is in active contact with U.S. customers, whereas TAMSA had no contact with the potential U.S. customers.

In *Beryllium from Kazakhstan*, the Department treated the sales as EP because ''verification findings confirmed the limits on BMI's (the U.S. affiliate) authority to finalize the sales and that BMI is acting solely as a processor of documentation and communications link'' (62 FR at 2649). In the instant case, in contrast, the verification findings indicate that Siderca Corp.'s authority is not limited, because of the existence of the selling agreement.

As for the *Canadian Steel* case relied upon by the respondent, the U.S. affiliate whose sales were deemed to be EP sales in that case did not solicit sales, negotiate contracts or prices, or provide customer support. Siderca Corp., in contrast, regularly did all of the above on behalf of TAMSA. Even if it did not expressly solicit this particular sale, its function, which included negotiation with respect to this sale, clearly exceeded the *Canadian Steel* definition of ancillary functions.

Although TAMSA relied upon *U.S. Steel Group* v. United States, that case actually involved CEP, not EP, sales. In that case, the Court of International Trade (''CIT'') examined the Department's determination in *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review*, 62 FR 18391 (April 15, 1997). The CIT noted that, during the review, the producer, Dillinger, stated that it set the terms of the sale, including the final price. The Court further noted that the Department had found that the U.S. affiliate, Francosteel, among other things, either solicited or responded to the initial U.S. customer contact, received the purchase orders, negotiated the final sale with the U.S. customer using the pricing and term guidelines provided by Dillinger, took title to the merchandise, acted as importer of record, and invoiced the U.S. customer. Finally, Francosteel had the flexibility to make decisions on its own as to price. All of these factors, ''[c]ombined with all the normal selling functions, which have not always led to CEP classification, legitimately may be viewed as pushing this sale over the edge into CEP rather than the EP category.'' *U.S. Steel Group*, 15 F. Supp. 2d at 903. A similar fact pattern exists in this case. Siderca Corp. has the authority to make pricing decisions on its own; it made the first contact with the customer and performed all of the selling functions listed above.

The case cited by petitioners also support a conclusion that this sale is best classified as a CEP sale. In *Wire Rod from Spain*, 63 FR at 40394, the Department treated the U.S. sales as CEP sales under a similar fact pattern. The Department noted that the U.S. affiliate (Acerinox) ''will contact U.S. customers that it has not dealt with for some time. Otherwise, U.S. customers contact Acerinox to inquire about purchasing'' Roldan's SSWR, the product made by the parent company. The Department further stated that Acerinox ''(m)ay accept the customer's order, if it is a small order. * * * For inquiries regarding significant purchases, Acerinox will contact (the parent company) to determine the sales terms' that are acceptable. After taking an order, Acerinox transmits it to the parent company. Acerinox then coordinates freight in the United States and collects and transfers payment to the parent company. Based upon this fact pattern, the Department stated that ''[t]he record shows that Acerinox was involved in every aspect of the sales process except for arranging for shipment [of the product] to the United States and invoicing the U.S. customers. Moreover, Acerinox's involvement in the sales process was extensive * * *'' when compared to that of the parent company. The Department further stated that ''[t]he preponderance of selling functions incurred to sell Roland's (wire rod) to the U.S. customers occurred in the United States. Furthermore, Acerinox's role in negotiating the terms of certain U.S. sales is not indicative of the ancillary role normally played by a ''processor of sales-related documentation'' and a ''communication link.'' Specifically, Acerinox's authority to negotiate and accept sales terms * * * as well as its authority to initiate contact with U.S. customers * * * contradicts' the parent company's claim that the U.S. affiliate's activities were ancillary. Thus, the Department classified these sales as CEP sales.

Again, the fact pattern in *Wire Rod from Spain* is consistent with that found in this review. TAMSA had no direct contact with the U.S. customer, whereas Siderca Corp., through its selling agreement, had the authority to set the price and terms. While TAMSA had a role in setting the price, as did the parent of Acerinox, Siderca Corp.''s contacts with customers, its flexibility in negotiating terms of sale, and its other sales-related activities, indicate that the sale is appropriately classified as CEP.

Finally, in *Korean Steel*, 63 FR at 13177, the Department again found that a fact pattern similar to that in this case warranted CEP treatment of the U.S. sales. In the *Korean Steel* case, the Department stated that ''(a)ll of Dongbu's U.S. sales are made through DBLA [the U.S. affiliate], and that Dongbu's U.S. customers seldom have contact with Dongbu. Furthermore, it is DBSA (and not Dongbu) that writes and signs the sales contract. * * * Furthermore, we find that, in addition to playing a key role in the sales negotiation process, DBLA played a central role in all sales activities after the merchandise arrived in the United States.''

Based on the facts of the case, and their similarity to previous cases concerning the issue of whether a sale should be classified as CEP or EP, we believe that TAMSA's sale to the United

States is properly classified as a CEP sale.

Comment 3

Petitioners argue that the Department should apply partial facts available for certain selling expenses incurred in the United States. Petitioners believe that TAMSA did not cooperate fully, or to the best of its ability, in providing proper figures and supporting documentation for various expenses such as brokerage.

Petitioners present a sequence of events which purport to show that TAMSA did not cooperate to the best of its ability. Petitioners point to the first price build-up submitted by TAMSA and assert that it contained numerous errors and omissions. Petitioners state that, despite requests for clarification of the expenses in the price build-up, TAMSA did not present all of the expenses or a satisfactory explanation until verification. During the verification in Veracruz, petitioners state that the Department discovered previously unknown and unreported expenses. Similarly, according to petitioners, at the verification of Siderca Corp. in Houston, the Department discovered new supporting documentation for the various expenses. Because neither all expenses nor all supporting documents were provided before the two verifications, petitioners urge the Department to use partial facts available with regard to these expenses.

TAMSA retorts that it did, in fact, cooperate fully and to the best of its ability. TAMSA states that, contrary to petitioners' claims, all expenses related to the sale into the United States were reported before verification in Veracruz. Of the three charges mentioned by petitioners (brokerage charges, stevedoring, and wharfage), TAMSA points out that each was reported before verification. While acknowledging that two of the three charges were reported late or were initially mis-reported, TAMSA attributes this delay to clerical errors or omissions that TAMSA itself discovered and corrected prior to the Department's first verification in Veracruz. Because the errors were minor, and were corrected either before or at verification, TAMSA contends that it is the Department's practice to accept such corrections. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden,* 63 FR 40449 (July 29, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909 (February 23, 1998); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 61964 (November 20, 1997).

Department's Position

We agree with respondent. While the Department generally requires respondents to report all expenses and provide any requested supporting documentation in accordance with established deadlines, the fact is that TAMSA provided data on nearly all expenses in a timely manner. TAMSA reported only one minor expense prior to the Department's verification in Veracruz. Furthermore, the Department verified the accuracy of the reported expenses. The additional support documentation added to the record at the verification in Houston did not reflect a change in the expenses reported. Although they demonstrated that Siderca Corp. did have greater control in the price build-up than originally claimed by TAMSA, the additional support documentation added to the record at the verification in Houston did not reflect a change in the expenses reported.

Finally, although TAMSA did not provide all of the supporting documentation for all of the expenses incurred prior to the verifications, the Department was able to supplement and verify all relevant information during the two verifications. Therefore, we will not make any changes with regard to these expenses.

Comment 4

Petitioners assert that the Department should deduct commissions paid to Siderca Corp. from the United States price. Assuming that TAMSA's United States sale is classified properly as a CEP sale, petitioners argue that the statute calls for commissions to be deducted from the United States Price.

Petitioners note that Siderca Corp. is entitled, under its selling agreement with TAMSA, to receive a ''commission'' equal to a percentage of the actual price charged to customers. If this figure is intended to offset expenses incurred by Siderca Corp., petitioners argue, the amount of the commission which exceeds the expenses should be deducted.

TAMSA counters that these are related party commissions and are thus intra-company transfers. TAMSA states that the general practice of the Department is to treat related party mark-ups in price not as commissions, but as intra-company transfers rather than as expenses. Since these are not sales expenses, they should not be deducted from United States price. TAMSA cites various cases in which the Department did not deduct commissions between affiliated parties. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom,* 63 FR 33320 (June 18, 1998); *Korean Steel,* 63 FR 13170.

Department's Position

We agree with respondent. The Department does not generally treat price mark-ups between affiliates such as the ones in this case as commissions. *See U.S. Steel Group,* 15 F. Supp. 2d at 903, and *Floral Trade Council* v. *United States,* Slip-Op. 99–10 (CIT January 27, 1999). Instead, these are intra-company transfers which the Department treats as part of the general operating expenses of the company. Thus we generally do not deduct them from U.S. price. Instead, in accordance with 19 CFR 351.402(e), we deduct the actual expenses of the affiliated importer. ''Although the statute appears to require the expense represented by commissions to be deducted from CEP whether or not the producer/exporter and U.S. [affiliate] are related, the statute does not define 'commissions.' '' *Floral Trade Council,* Slip Op. 99–10 at 10. Therefore, the Court has sustained the Department's practice of treating commissions paid by the producer/exporter to an affiliate as an intra-company transfer, rather than as a true commission. *Id.*

Petitioners cite section 771(d) of the Act (19 U.S.C. 1677a(d)) in support of their contention that commissions should be deducted. However, the opinion in *U.S. Steel Group* makes clear that, ''[i]f expenses represented by the commissions are already accounted for by means of a deduction for selling expenses nominally made under another provision of 19 U.S.C.A. 1677a(d), or the expense does not truly exist, no additional commission deduction need be made.'' 15 F. Supp. 2d at 903. Because the Department has already made adjustments for all of TAMSA's selling expenses under 19 U.S.C. 1677a(d) related to the sale in question, an additional adjustment for ''commission'' would constitute double-counting. Consequently, the Department has made no further adjustments in this regard.

Petitioners' claim that the amount of the ''commission'' that exceeds the expenses incurred by Siderca Corp. is also already addressed by another provision of section 772(d) of the Act (19 U.S.C. 1677a(d)), specifically the CEP profit provision, section 772(d)(3) of the Act (19 U.S.C. 1677a(d)(3)). The

Court has also affirmed the Department's position that the amount by which ''commissions'' paid to affiliates represents profit for the affiliate receiving them. A profit amount has already been accounted for under the CEP profit provision. *Floral Trade Council,* Slip Op. 99–10 at 13.

Comment 5

Petitioners urge the Department to correct TAMSA's reported warehousing expenses in connection with the provision of Just In Time services to certain domestic customers. Petitioners assert that TAMSA's methodology, which reports expenses on a monthly basis by regional warehouse, is distortive. Petitioners cite changes in the actual expenses per month, and state that there appears to be no correlation between these expenses and the tonnage shipped or warehoused in that month. In particular, there appear to be instances where costs go up even though tonnages go down for a month. Petitioners urge the Department to recalculate warehousing expenses for each region on a per-ton amount for the entire period of review.

TAMSA counters that its methodology is reasonable, that it acted to the best of its ability in providing information, and that its reporting methodology was not unreasonably distortive. Because of the nature of Just In Time services (*i.e.,* rapid delivery upon order), expenses incurred in a month usually correspond closely to tonnages shipped and sold in that month. To relate expenses from one month to sales in a different month, as petitioners' methodology would, is more distortive, according to TAMSA. TAMSA further explains how lower tonnages in a month might incur higher expenses. For example, TAMSA could incur more customer support expenses during a month in which it made many smaller sales than in a month in which it made a single larger tonnage sale. TAMSA cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Reviews* (63 FR 63860, November 17, 1998) in support of its assertion that the Department should accept this methodology.

Department's Position

We agree with respondent. The methodology which TAMSA used is based on actual, verified monthly figures. By using this methodology, TAMSA has provided the Department with a more detailed, and more accurate, warehousing cost. Adopting the petitioners' methodology would be less accurate, as it would spread out monthly costs over the entire period of review. As it is generally the Department's preference to use the most accurate and reasonable methodology possible, a warehousing expense methodology which is based on monthly figures is preferable to one based on annual averages.

Comment 6

Petitioners request that the Department adjust the reported home market freight charges for inland freight from the plant to the warehouse. Since TAMSA was unable to report the actual freight charges, it took the price lists for freight and adjusted these using a methodology to take into account trucks which did not ship with a full load. Petitioners argue that this ''constructed'' freight charge is distortive. As partial facts available, petitioners suggest using the prices from the price lists as a surrogate for the freight costs.

TAMSA counters that its allocation methodology was reasonable. As directed by the Department's original questionnaire, TAMSA attempted to allocate freight costs on the basis of the unit weight of the individual products shipped. Because it used actual price lists, as adjusted for instances not involving full truck loads, TAMSA claims that its methodology more closely reflects the actual prices paid for freight.

Department's Position

We agree with respondent. While the Department prefers to have actual freight costs, a reasonable allocation methodology that most closely reflects the actual costs is acceptable. The Department verified information regarding price lists and payment for freight. Based upon this verified information, the Department believes that this methodology most closely reflects actual costs.

Comment 7

Both petitioners and respondents request that the Department correct certain clerical errors. Petitioners request that the Department make an adjustment to its cost calculation methodology by eliminating the field titled ''SEPTADJ,'' that it correct the direct selling expenses calculation by adding CREDITU to the expense, and that it correct the application of exchange rates to packing expenses. TAMSA requests that the Department calculate normal value based on monthly averages (instead of on averages for the ''90–60 window'' as it has done in the current program), that it add BILLADJH to the cost calculation program, that it correct a conversion error in the CEP ratio calculation, and that it not deduct CREDITU from U.S. direct selling expenses.

Department's Position

The Department has examined the error allegations, and has made the changes requested by both parties. Petitioners' and TAMSA's clerical error requests regarding direct selling expenses address the same issue. Both parties proposed programming language to address the issue. Because we believe that petitioners most closely follow the proper methodology, we have adopted their suggested programming language for the final results. Because the details of these clerical error issues involve proprietary data, *see Analysis Memorandum for Final Results,* March 8, 1999.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margins exist:

CIRCULAR WELDED NON-ALLOY STEEL PIPES AND TUBES

Producer/manufacturer/exporter	Weighted-average margin
Hylsa	0.00
TAMSA	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of oil country tubular goods from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm

covered in this review, the cash deposit rate will be 23.79 percent. This is the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306 of the Department's regulations. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 351.221 of the Department's regulations.

Dated: March 10, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7100 Filed 3–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 980930252–9012–02]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT)

SUMMARY: This Notice supplements the **Federal Register** Notice of November 6, 1998 (63 FR 59938–59941) announcing the availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives (also referred to as ''interns'') from the Newly Independent States of the Former Soviet Union. All information in the previous announcement remains current, except for the changes to the closing date.

DATES: This Notice extends the closing date of the referenced **Federal Register** Notice for four months to 5 p.m. May 31, 1999. All awards are expected to be made prior to August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

Liesel Duhon,

Director, Special American Business Internship Training Program.

[FR Doc. 99–7111 Filed 3–22–99; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include briefings on trade priorities and issues, the World Trade Organization, economic sanctions and Virtual Trade Mission activities. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13062.

Date: April 14, 1999.

Time: 10:00 a.m. to 5:00 p.m.

Address: The Ronald Reagan International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC, 20004. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than March 31, 1999, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC, 20230. Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC, 20230 (Phone: 202–482–1124).

Dated: March 15, 1999.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 99–6798 Filed 3–22–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031799B]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet during April 5–9, 1999. The Council meeting will begin on Monday, April 5, at 3 p.m., with a closed session to discuss litigation and personnel matters. The Council will convene in open session at 3:30 p.m. on April 5 and reconvene in open session each day at 8 a.m. through Friday, April 9. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Red Lion's Sacramento Inn, 1401 Arden Way, Sacramento, CA; telephone: (916) 922–8041.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call
2. Approve Agenda

B. Coastal Pelagic Species Management

1. Exempted Fishing Permits to Harvest Anchovy in Closed Area
2. Status of NMFS Review of Plan Amendment

C. Highly Migratory Species Management

1. Direction on Development of Fishery Management Plan

D. Administrative and Other Matters

1. Report of the Budget Committee
2. Report of the Legislative Committee
3. Appointments to Advisory Entities
4. Approve June 1999 Draft Agenda

E. Habitat Issues - Report of the Habitat Steering Group

F. Salmon Management

1. Identification of Stocks Not Meeting Escapement Goals for Three Consecutive Years
2. Methodology Reviews for 1999
3. Tentative Adoption of 1999 Ocean Salmon Measures for Analysis
4. Clarify Council Direction, If Necessary
5. Final Action on 1999 Measures

G. Groundfish Management

1. Status of Federal Regulations and Activities and Applications for Exempted Fishing Permits
2. Status of Strategic Planning Process
3. Work Load Priorities
4. Mandatory Observers on At-Sea Processors
5. Determination of Total Catch
6. Status of Capacity Issues, Including Trawl Buyback Program
7. Primary Fixed Gear Sablefish Fishery - Limits and Dates for 1999 and Longer Term Issues
8. Inseason Adjustments, Including Possible Emergency Action for Bocaccio
9. Rebuilding Plans for Lingcod, Bocaccio, and Pacific Ocean Perch, Including Allocation and Bycatch Reduction
10. Other Rockfish Allocation Issues
11. Landing of ''Overages''
12. Bycatch Minimization

Advisory Meetings

The Groundfish Management Team convenes at 8 a.m. on Monday, April 5, and continues meeting as necessary April 6 through 9 to address groundfish issues on the Council agenda.

The Groundfish Advisory Subpanel convenes at 1 p.m. on Monday, April 5, and at 8 a.m. on Tuesday, April 6, and continues meeting as necessary April 7 and 8 to address groundfish issues on the Council agenda.

The Habitat Steering Group meets at 9 a.m. on Monday, April 5, to address issues and actions affecting habitat of fish species managed by the Council.

The Scientific and Statistical Committee will convene on Monday, April 5, at 8 a.m. and on Tuesday, April 6, at 8 a.m. to address scientific issues on the Council agenda.

The Salmon Technical Team will meet as necessary Monday through Friday April 5–9 to address salmon management items on the Council agenda.

The Salmon Advisory Subpanel will convene on Monday, April 5, at 8 a.m. and will continue to meet April 6 through 9 as necessary to address salmon management items on the Council agenda.

The Legislative Committee of the Council will meet on Monday, April 5, beginning at 10 a.m. to review proposed changes to legislation affecting fishery management.

The Budget Committee of the Council will convene at 1 p.m. on Monday, April 5, to review the status of the Council's 1999 budget and other related matters.

The Ad-Hoc Legal Gear Committee will meet on Tuesday, April 6 at 7 p.m. and on Wednesday, April 7 as necessary to discuss changes to groundfish legal gear specifications to reduce discard.

The Enforcement Consultants meet at 5:30 p.m. on Tuesday, April 5, and continue to meet as necessary April 6 through 9 to address enforcement issues relating to Council agenda items.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 17, 1999.

Richard W. Surdi,

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

[FR Doc. 99–7061 Filed 3–18–99; 1:36 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031199D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Pelagics Advisory Panel (AP) members will hold a meeting.

DATES: The meeting will be held April 14–15, 1999, from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the The Ilikai Hotel, New Zealand Suite, 1777 Ala Moana Blvd., Honolulu, HI 96815; telephone: (808) 949 3811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The AP meeting will discuss and may make recommendations to the Council on the following agenda items:

1. Introduction and selection of AP Chairman
2. 1st quarter 1999 Hawaii and American Samoa longline fishery report;
3. Shark incidental catch in the Hawaii longline fishery and issues related to shark finning;
4. Status of Council and NMFS projects concerning mitigation of longline-seabird interactions in the Hawaii longline fishery;
5. Status of NMFS research on bycatch of turtles in the Hawaii longline fishery, and issues relating to legal action against NMFS concerning the current biological opinion for turtles;
6. Marine debris; sources and impacts on habitat and protected species;
7. Status of the area closure for large pelagic fishing vessels around the islands of American Samoa;
8. Progress of the Multi-lateral High Level Conference process to implement a management convention for tunas in the Central-West Pacific;
9. Update on issues relating to blue marlin, and blue marlin stock assessment;
10. Status of bigeye and yellowfin tuna tagging around the Hawaiian Islands;
11. Recreational fishery reporting and formation of a recreational fisheries data task force;
12. Review of Council program plan; and
13. Other business as required.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act,

those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 17, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–7075 Filed 3–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031199E]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Native and Indigenous Rights Advisory Panel.

DATES: The meeting will be held on April 19 and 20, 1999, from 8:30 a.m. to 4:30 p.m. each day.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, telephone: 808–522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: This orientation meeting of the Native and Indigenous Rights Advisory Panel will review sections of the Magnuson-Stevens Act pertaining to the Western Pacific Community Development Program and Demonstration Projects, past actions of the Western Pacific Council which relate to indigenous fishing practices and access to fisheries and possible future actions of the Council such as a Community Development Program for the Hawaii Mau Zone bottomfish fishery.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 17, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–7076 Filed 3–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Conference Meeting of the Overseas Dependents' Schools National Advisory Panel (NAP) on the Education of Dependents With Disabilities

AGENCY: Department of Defense Education Activity.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Overseas Dependents' Schools NAP is scheduled to be held from 8 am to 4 pm on April 19–23, 1999. The meeting will be open to the public and will be held in Room 830 at the Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, Virginia 22203–1635. The purpose of the meeting is to: (1) review the proposed revision of Department of Defense Instruction 1342.12, ''Provision of Early Intervention and Special Education Services to Eligible DoD Dependents in Overseas Areas,'' dated March 12, 1996; (2) review activities and plans for the Comprehensive System of Personnel Development that encompasses activities that build the skills of personnel who work with children with special needs and their families; and (3) review the ''Department of Defense Directory of DoD Dependent Schools (DoDDS) and Education Development Intervention Services (EDIS).'' Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Ms. Diana Patton at (703) 696–4492, extension 1947.

Dated: March 18, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–7033 Filed 3–22–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 22, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program *(February 22, 1993, 58 FR 10002).*

Changes:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, Academy of Health Services, Physical Therapy Branch, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

* * * * *

A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program.

SYSTEM LOCATION:

Commandant, Academy of Health Services, Physical Therapy Branch, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Graduates of the U.S. Army Physical Therapy Program since 1928.

CATEGORIES OF RECORDS IN THE SYSTEM:

Academic grades only on graduates from 1973 to present. Academic grades and varying amounts and types of anecdotal information on performance: 1945–1972.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To provide certification of graduation from an approved physical therapy program to the individual graduate.

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

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

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

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

STORAGE:

Paper records in file folders:

RETRIEVABILITY:

By last name of graduate.

SAFEGUARDS:

Records are in closed files, accessible only to designated officials having need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, Academy of Health Services, Physical Therapy Branch, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant, Academy of Health Services, Physical Therapy Branch, ATTN: MCCS HMT, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

For verification purposes, the individual should provide the full name, maiden name if married, year of graduation, current address, institution and complete address to which transcript is to be mailed if other than that of individual concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant, Academy of Health Services, Physical Therapy Branch, ATTN: MCCS HMT, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

For verification purposes, the individual should provide the full name, maiden name if married, year of graduation, current address, institution and complete address to which transcript is to be mailed if other than that of individual concerned.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Staff and faculty of appropriate school and/or training hospital responsible for presentation of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10c TAPC

SYSTEM NAME:

Career Management Individual Files *(February 22, 1993, 58 FR 10002).*

Changes:

SYSTEM IDENTIFIER:

Change to read 'A0600-8-104g TAPC'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active Army members in enlisted grades E–5 through E–9, all warrant and commission officers'.

* * * * *

STORAGE:

Delete 'card files' and add 'electronic media'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records will be destroyed 90 days after separation of the service member from active duty by reason of discharge, transfer, retirement, or death'.

* * * * *

A0640–8–104g TAPC

SYSTEM NAME:

Career Management Individual Files.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474. Decentralized segments exist at the General Officer Management Office, Judge Advocate General's Office, the Chief of Chaplains Office, and the Medical Service Corps. Official mailing addresses may be obtained from U.S. Total Army Personnel Command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Army members in enlisted grades E–5 through E–9, all warrant and commission officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Orders; record briefs; statements of preference; school credit papers; transcripts; details; career personnel actions; correspondence from individual concerned; original copy of efficiency report; appeal actions; assignment memoranda and requests for orders; memoranda concerning professional development actions; classification data; service awards; service agreements; variable inventive pay data; memoranda of interviews; assignment applications; resumes of qualifications, personal background and experience supporting service member's desires, nominative action by career managers; academic reports; copies of admonition/reprimands imposed under Article 15, UCMJ, letters of appreciation/commendation/recommendation;

reports/letters from accredited educational and training organizations; and similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and E.O. 9397 (SSN).

PURPOSE(S):

To manage member's Army career, including assignments, counseling, and monitoring professional development.

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

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

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

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

STORAGE:

Paper records in file folders and on electronic media.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized career management activity personnel.

RETENTION AND DISPOSAL:

Records will be destroyed 90 days after separation of the service member from active duty by reason of discharge, transfer, retirement, or death.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDO, 200 Stovall Street, Alexandria, VA 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, 200 Army Pentagon, Room 1E4l7, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, 200 Army Pentagon, Room 2E444, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, 200 Stovall Street, Alexandria, VA 22332–0474. Individuals should designate Officer or Enlisted status.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, 200 Army Pentagon, Room 1E417, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, 200 Army Pentagon, Room 2E444, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, 200 Stovall Street, Alexandria, VA 22332–0474. Individuals should designate Officer or Enlisted status.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; enlistment, appointment, or commission related forms pertaining to the service member having a current active duty status; academic, training, and qualifications records acquired incident to military service; correspondence, forms, documents and other related papers originating in or collected by the military department for management purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–7035 Filed 3–22–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Notice of a Computer Matching Program Between the United States Department of Agriculture and the Defense Manpower Data Center of the Department of Defense.

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between United States Department of Agriculture (USDA) and DoD that their records are being matched by computer. The record subjects are USDA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by USDA.

DATES: This proposed action will become effective April 22, 1999, and the matching may commence unless changes to the program are required due to public comment or by Congressional or by the Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the DoD and USDA have concluded an agreement to conduct a computer matching program. The purpose of the match is to exchange personal data between the agencies for debt collection.

The match will yield the identity and location of the debtors within the Federal government so that USDA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between USDA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to Ms. Joyce Baumgartner, Debt Collection Coordinator, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 3022, South Building, Washington, DC 20250. Telephone (202) 720–4958.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989 at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on March 10, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 17, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *Participating Agencies:* Participants in this computer matching program are the United States Department of Agriculture (USDA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The USDA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this match is to identify and locate any matched Federal personnel, employed, serving, or retired, who owe delinquent debts to the Federal Government under certain programs administered by the USDA. USDA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by the USDA of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, and to the Office of Personnel Management in the case of retired non-postal civilian employees to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for Conducting the Match:* Debt Collection Act of 1982 (Public Law 97–365), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104–134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive Order 12731; 4 CFR 101.1 – 105.5, Federal Claims Collection Standards; 5 CFR 550.1101 – 550.1108 Collection by Offset from Indebted Government Employees (OPM); and 7 CFR Part 3, Debt Management (USDA).

D. *Records to be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

Record system identified as USDA/FSA-14, entitled 'Applicant/Borrower,' last published in the **Federal Register** at 62 FR 5583 on February 6, 1997.

Record system identified as USDA/FCIC-1, entitled 'Accounts Receivable,' last published in the **Federal Register** at 53 FR 4047 on February 11, 1988.

Record system identified as USDA/FSA-13, entitled 'Claims Data Base (Automated),' last published in the **Federal Register** at 62 FR 5581 on February 6, 1997.

Record system identified as USDA/OCFO-3, entitled 'Billings and Collections Systems,' last published in the **Federal Register** at 62 FR 47622 on September 10, 1997.

DoD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 61 FR 32779, June 25, 1996.

E. *Description of Computer Matching Program:* USDA, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs the USDA administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the USDA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of non-postal Federal civilian employees and military members, both active and retired. The 'hits' or matches will be furnished to USDA. USDA is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the USDA's source file and for resolving any discrepancies or inconsistencies on an individual basis. USDA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by USDA will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 136,000 delinquent debtors.

The DMDC computer database file contains approximately 4.8 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.1 million records of active and retired non-postal Federal civilian employees.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program

becomes effective and the respective agencies may begin the exchange of data at the mutually agreeable time on a annual basis. By agreement between USDA and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 99–7036 Filed 3–22–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting 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: Interested persons are invited to submit comments on or before May 24, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland 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 Acting Leader, Information Management Group, Office of the 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: March 18, 1999.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Local Educational Agencies' (LEAs') Collection of Data and Submission of Comprehensive Plan for Coordinating Social and Educational Services Under Title XI, Section 11004 of the Elementary and Secondary Education Act (ESEA) as Amended by the Improving America's Schools Act (Pub. L. 103–382).

Frequency: On occasion.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 500.

Burden Hours: 500.

Abstract: Under Title XI, LEAs may apply to the Secretary for authority to use up to five percent of the ESEA funds they receive to develop, implement, or expand a coordinated services project will improve the access of children and their families to social, health and educational services necessary for success in school.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: NCES Quick Response Information System.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 10,161.

Burden Hours: 10,161.

Abstract: The Quick Response Information System (QRIS) is comprised of two types of surveys, one oriented towards elementary and secondary school and library issues, the Fast Response Surveys (FRSS) and the second intended to address issues in postsecondary education, the Postsecondary Education Quick Information System Surveys (PEQIS). All the surveys conducted under the QRIS are required to inform for current policy issues for which there are no other timely and/or appropriate data available. In recent years surveys have been conducted on topics as diverse as distance education in postsecondary education, services for students with disabilities in postsecondary education, advanced telecommunications in the elementary and secondary schools, summer programs for migrant students, and teacher quality.

[FR Doc. 99–7063 Filed 3–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington,

DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland 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 Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 17, 1999.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Carl D. Perkins Vocational and Technical Education Act (P.L. 105–332)—State Plans.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 9,520.

Abstract: Pub. L. 105–332 requires State Boards for Vocational Education to submit a 5-year State plan, with annual revisions as the Board deems necessary, in order to receive Federal funds. Program staff review the plans for compliance and quality.

[FR Doc. 99–6999 Filed 3–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The National Commission on Mathematics and Science Teaching for the 21st Century; Notice of Establishment

AGENCY: Office of the Under Secretary, Education.

ACTION: Notice of establishment of the National Commission on Mathematics and Science Teaching for the 21st Century.

SUMMARY: The Secretary of Education announces his intention to establish the National Commission on Mathematics and Science Teaching for the 21st Century. The Commission will be governed by Federal Advisory Committee Act (P.L. 92–463 as amended; 5 U.S.C.A. Appendix 2).

Purpose

The Secretary has determined that the establishment of the National Commission on Mathematics and Science Teaching for the 21st Century is necessary and in the public interest as stated in the Secretary's Annual State of American Education report. The Commission's purpose is to review the current state of American K–12 mathematics and science education with a focus on the challenges of teacher recruitment, preparation, retention, and professional growth and to articulate the steps needed to strengthen the classroom practice of math and science teachers. The Commission will produce a report describing specific action steps that federal, state, and local policymakers can take to address math and science teacher supply and quality issues. The Commission will issue a final report to the Secretary by September 30, 2000. This report shall contain a detailed statement of the findings and conclusions together with its recommendations. The Secretary will share this report with the President and Congress along with the Commission's recommendations. The Commission shall consist of twenty-two members, appointed by the Secretary, who shall be appointed from, but not limited to, the following groups: current or recent members of Congress, Governors, Mayors, State Legislators, Chief State School Officers, Nobel laureates, CEO's, University president, principals, teachers, parents, students, public representatives, and other distinguished leaders in the fields of mathematics and science. Ex-officio, non-voting members, of the Commission, include: the Secretary of Education or his designee, the Secretary of Defense, the Secretary of Energy, the Secretary of Transportation, the NASA Administrator, the Director of the Office of Science and Technology Policy, the Director of the National Science Foundation, and the President of the National Academy of Sciences.

FOR ADDITIONAL INFORMATION: Contact Linda Rosen, U.S. Department of Education, Washington, DC 20202, Telephone: (202) 205–9891.

Dated: March 17, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–7058 Filed 3–22–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science, Office of Science Financial Assistance Program Notice 99–16; Atmospheric Radiation Measurement (ARM) Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Sciences (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to support the experimental and theoretical study of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). This notice requests applications for grants to support renewals of activities currently funded by DOE under previous Special Research Grant Program Notices issued for the ARM Program. A very limited number of new research efforts may be funded.

DATES: Applicants are strongly encouraged to submit a two page (maximum) brief preapplication. All preapplications, referencing Program Notice 99–16, should be received by

DOE by 4:30 P.M., E.D.T., April 12, 1999. A response to the preapplications discussing the potential program relevance and generally encouraging or discouraging a formal application will be communicated to the applicant by April 19, 1999.

The deadline for receipt of formal applications is 4:30 P.M., E.D.T., June 7, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000.

ADDRESSES: Preapplications referencing Program Notice 99–16, should be sent by E-mail to p.crowley@science.doe.gov. Preapplications will also be accepted if mailed to the following address: Dr. Patrick Crowley, Office of Biological and Environmental Research, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 99–16, should 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 99–16. This address must be used when submitting applications by U.S. Postal Service Express Mail or any other commercial mail delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Patrick Crowley, preferably by e-mail p.crowley@science.doe.gov, otherwise by telephone: (301) 903–3069, or at the Office of Biological and Environmental Research, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. The full text of Program Notice 99–16 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: New efforts should address one or more of the following within the context of ARM needs and data capabilities:

- Upper tropospheric water vapor concentration and transport.
- Use of ARM data to quantitatively test cloud and radiation parameterizations used in General Circulation Models (GCMs) and Tropical Western Pacific (NWP) Models.
- The statistics of cloud fields and their interaction with atmospheric radiation.
- Research using Single Column Models focussing on applications of data to improve the models and extrapolate the improvements to GCMs.
- New efforts to develop ice water path and cloud parameter retrievals with focus on ice content.

One of the major scientific objectives of the Environmental Sciences Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models used to predict future climate, particularly the General Circulation Models (GCMs). This program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional prediction of climate and climate change. The major component of the ARM Program is an experimental testbed to gather data for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This testbed is referred to as the Cloud and Radiation Testbed (CART). The first ARM CART site began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. The Tropical Western Pacific (TWP) site will consist initially of island-based suites of instrumentation focused on cloud and radiative properties in the tropical ocean environment. The first and second of the TWP Atmospheric Radiation and Clouds Stations (ARCS) are operating on the island of Manus, Papua New Guinea and on Nauru respectively. Similar instrumentation is gathering data in the vicinity of Point Barrow, on the North Slope of Alaska and an island site near Atqasak will be instrumented to compliment the Point Barrow measurements.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE Environmental Sciences Division (ESD), successful applicants will participate as ARM Science Team members along with selected scientists from other ESD programs that relate to the ARM Program. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two (2) trips of 3 days each to Chicago, IL.

Successful applicants for renewal or enhancement of previously awarded grants, will demonstrate: (a) continued relevance of their work to the goals of the ARM Program; (b) the quality and relevance of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM program, particularly the design and development of CART facilities, as a result of previous funding. Renewal applications should include a special section covering items (b) and (c) entitled ''Accomplishments Under Previous Support.''

Successful applicants for new grants will demonstrate the role of their research in the improvement of General Circulation Models and/or related models and delineate the path that their results will take to make those improvements. Successful applicants will be involved in one or more of four activities: (a) the development of models and parameterization of radiative transfer or cloud processes, including aerosol effects, or the testing of these models in GCMs or process-level models; (b) experimental studies at CART facilities to test elements of models and their performance; (c) experimental studies to obtain key laboratory data; or (d) the analysis of existing data, including field data and satellite data, to support model development or testing.

The efforts proposed should have as a focus the conduct of research using the CART facilities either in operation or being developed for ARM. Successful applicants will participate in the continuing development of the detailed experimental approaches for CART and guide the evolving development and acquisition of the experimental equipment.

Program Funding

It is anticipated that approximately $3,000,000 will be available for multiple awards for this activity in FY 2000, contingent upon availability of appropriated funds. Multiple year funding of awards is expected, also contingent upon availability of funds. The allocation of funds will depend on the number and quality of the applications received. It is anticipated that most of the funds will support renewals of existing research. Typical ESD awards are $200,000 per year, but range from $50,000 to $600,000.

Collaborative applications are encouraged. Awards are anticipated to begin on or about November 1, 1999.

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.

Applications for renewal of ongoing efforts must include an ''Accomplishments under Previous Support'' section, which should not exceed ten (10) additional double-spaced pages. The technical portion of the application should not exceed twenty-five (25) doubled-spaced pages. An abstract of less than 200 words must be included with the application. Lengthy appendices are discouraged.

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.

Technical information on the ARM Program is available from the ARM Program Office at Pacific Northwest Laboratory, P.O. Box 999, Richland, WA 99352 (telephone (509) 375–6964).

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, D.C., on March 16, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–7064 Filed 3–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

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), Monticello. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Wednesday, April 21, 1999 7:00 p.m.–9:00 p.m.

ADDRESS: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (970) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Updates on repository status; Monticello surface and groundwater; reports from subcommittees on local training and hiring; health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made 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. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

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 by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (970) 248–7727.

Issued at Washington, DC on March 17, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–7071 Filed 3–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1023–000]

Boston Edison Company; Notice of Filing

March 17, 1999.

Take Notice that on March 11, 1999, Boston Edison Company (Edison) of Boston, Massachusetts, joined and supported by Monatup Electric Company (Montaup), tendered for filing the Fourth Amendment to its FERC Electric Rate Schedule No. 69. The Fourth Amendment was executed by Edison and Montaup for the purpose of extending the time for Montaup to make its Closing Payments to Edison in connection with the sale of Edison's Pilgrim nuclear power plant to Entergy Nuclear Generation Company. Edison and Montaup request a March 31, 1999, effective date of the amendment.

Edison states that copies of the filing have been served on the Massachusetts and Rhode Island attorney generals and on the service list compiled in Docket Nos. EC99–18–000, *et al.*

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before March 26, 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/

online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6984 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–391–002]

Colorado Interstate Gas Company; Notice of Tariff Filing

March 17, 1999.

Take notice that on March 11, 1999, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourth Revised Sheet No. 176, Substitute Third Revised Sheet No. 177, Substitute Third Revised Sheet No. 178, Substitute third Revised Sheet No. 179 and First Revised Sheet No. 317, to be effective March 5, 1999.

CIG states that tariff sheets are filed in compliance with the Order issued February 25, 1999 in Docket No. RP98–391–000 and 001. This Order approved CIG's Swing Service subject to conditions.

CIG states that copies of this compliance filing have been served on CIG's jurisdictional customers and public bodies.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6988 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–14–000]

Green Wolf Oil Company; Notice of Petition for Adjustment

March 17, 1999.

Take notice that on February 17, 1999, Green Wolf Oil Company, (Green Wolf),[1] filed a petition for staff adjustment in the above-referenced docket, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Rules 1101–1117 (18 CFR 385.1101–385.1117) of the Commission's Rules of Practice and Procedure. Green Wolf seeks relief from paying Kansas ad valorem tax refunds to Panhandle Eastern Pipe Line Company (Panhandle) and Williams Gas Pipeline Central, Inc. (Williams).[2] Green Wolf's petition is on file with the Commission and open to public inspection.

Green Wolf asserts that paying the two pipeline refund claims will cause it to endure a special hardship, inequity, and an unfair distribution of burdens. Green Wolf asserts that all of the assets from the dissolved partnership are long gone, and that the remaining assets, i.e., the leases in question, do not produce enough to cover the refund demand. Green Wolf also points out that six of the eight wells involved operated at a loss over most of the period from 1990–1998. Green Wolf further states that one of the former partners (Wolfberg) is in bankruptcy. Therefore, Green Wolf contends that any refund attributable to Wolfberg is uncollectible. Green Wolf also asserts that the action requiring Green Wolf to make the refunds, i.e., the Circuit Court of Appeals decision in *Public Service Company of Colorado* v. *FERC,* 91 F.3d 1478 (D.C. Cir. 1996), is ''entirely illegal and inequitable because Green Wolf had no notice of the proceedings beginning in 1983 upon which the refund demand is based until well after the ultimate decisions became final.'' [3] Green Wolf further contends that, without notice sufficient to satisfy due process under 44 U.S.C. §§ 1507 and 1508, neither the Circuit Court of Appeals nor the FERC has ''in personam jurisdiction'' over Green Wolf.[4] Green Wolf also argues that requiring Green Wolf to pay interest on the refund principal is wholly inequitable.

In addition, Green Wolf seeks relief from having to pay the refunds attributable to: (1) other working interest owners; (2) royalty interest owners; (3) pre-October 4, 1983 production; and (4) certain NGPA section 103(b)(2) wells, after the deregulation of those wells in June of 1987. Green Wolf asserts that, since 1983, the ownership of royalty interests in the leases has changed numerous times, that the records for payment of royalties for the years in question have been destroyed, and that the accountant who handled the partnership records (which includes those pertaining to payment of royalty interests) has died. In view of this, Green Wolf contends that it is now impossible to ascertain, with any degree of accuracy, the amount of overpayment which must be demanded from any of the royalty interest owners, living or dead. Therefore, Green Wolf contends that it cannot be held accountable for the refunds attributable to the royalty interest owners.

Green Wolf also contends that the Commission must permit it to offset its refund obligations on the Campbell #1 and #2 wells to compensate for Williams' underpayment to Green Wolf on two other wells which, according to Green Wolf, were entitled to but did not receive the NGPA section 108 price.

Finally, Green Wolf contends that the interest associated with Williams' refund claim should be paid by Williams, because Green Wolf's gas sales contract with Williams held that Williams would be responsible for refunding any interest associated with refunds required by the Federal Power Commission—the predecessor agency to the Federal Energy Regulatory Commission. Green Wolf also argues that Article I, Section 10 of the United State Constitution as prohibiting ex post facto laws and laws which impair the obligations of contracts, and that in view of this and the common law of contracts (which permits the parties to divide burden as they choose) Williams should be the one held responsible for paying the interest associated with its refund claim.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with

[1] Green Wolf is a dissolved partnership that was comprised of partners Laurance B. Wolfberg (Wolfberg) and Robert I. Greenberg (Greenberg). Wolfberg and Greenberg each held a one-half interest in the partnership until it was dissolved in 1984 by withdrawal of Greenberg.

[2] The total refund claim against Green Wolf stands at $330,755.13, plus the interest that continues to accrue on these refund obligations. Panhandle's refund claim totals $145,274.28 ($52,295.60 in principal and $92,978.68 in interest). Williams' refund claim totals $185,479.85 ($67,824.06 in principal and $117,655.79 in interest).

[3] Petition at pages 6 and 7.

[4] Petition at page 7.

the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6989 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–252–000]

Northern Natural Gas Company; Notice of Application

March 17, 1999.

Take notice that on March 11, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–252–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Northern to construct and operate a new compressor station, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Northern proposes to construct and operate a new South Sioux City Compressor Station at the previously abandoned South Sioux City compressor site located in Dakota County, Nebraska. Northern states that the proposed South Sioux City compressor station will consist of two (2) electric motor driven reciprocating compressors (1,750 horsepower (Hp) each) and certain yard piping and appurtenant facilities, as required to accommodate the new station configuration. Northern also states that the proposed compressor station will provide expanded capacity which will be used to provide 13,502 Dth/d of new incremental firm transportation service for one shipper, as well as, to meet the currently required delivery pressures on Northern's West Leg.

Any person desiring to be heard or making any protest with reference to said application should on or before April 7, 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 taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public conveniences 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 Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–6990 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2170–000]

San Diego Gas & Electric Company; Notice of Filing

March 17, 1999.

Take notice that on March 16, 1999, Duke Energy South Bay LLC (South Bay), tendered for filing an amendment to the South Bay Must Run Agreement. San Diego Gas & Electric Company executed a certificate of concurrence regarding the amendment.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.2114). All such motions and protests should be filed on or before March 26, 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. This filing may also be

viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7053 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2172–000]

San Diego Gas & Electric Company; Notice of Filing

March 17, 1999.

Take notice that on March 16, 1999, Cabrillo Power I LLC tendered for filing an amendment to the Encina Must-Run Agreement, effective upon Cabrillo Power I's acquisition of San Diego Gas & Electric Company's interest in the Encina Generating Station. San Diego Gas & Electric Company executed a certificate of concurrence regarding the amendment.

Cabrillo Power I has requested that the Commission act on this filing by March 31, 1999.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before March 26, 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7054 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2173–000]

San Diego Gas & Electric Company; Notice of Filing

March 17, 1999.

Take notice that on March 16, 1999, Cabrillo Power II LLC filed an amendment to the Combustion Turbines Must-Run Agreement, effective upon Cabrillo Power II's acquisition of 17 combustion turbine facilities from the San Diego Gas & Electric Company. San Diego Gas & Electric Company executed a certificate of occurrence regarding the amendment. Cabrillo Power II has requested that the Commission act on this filing by March 31, 1999.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before March 26, 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. This filing may also be viewed on the Internet at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7055 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–222–000, OA96–76–003 and OA97–604–000]

Southern California Edison Company; Notice of Filing

March 17, 1999.

Take notice that on January 14, 1999, Southern California Edison Company (Edison), tendered for filing its refund report in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 26, 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7052 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–243–000]

Southern Natural Gas Company; Notice of Application

March 17, 1999.

Take notice that on March 8, 1999, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563 filed an application with the Commission in Docket No. CP99–243–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its 50 percent interest in certain offshore Louisiana facilities to Chevron U.S.A. Production Company, *et al.*, (Chevron) all as more fully set forth in the application which is open to the public for inspection. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Southern proposes to abandon its 50 percent interest in the Main Pass 77 Pipeline and Receiving Station, offshore Louisiana, facilities to Chevron. Southern states that the facilities consist of approximately 2.77 miles of 10-inch diameter pipe that extends from Chevron's Main Pass Block 77 platform to a subsea interconnection in Main Pass Block 151 on Southern's 18-inch diameter South Pass 60 pipeline. Southern also proposes to abandon its interest in the receiving station located on Chevron's Main Pass Block 77 platform to Chevron. Southern states that Natural Gas Pipeline Company of

America (Natural) also owns a 50 percent interest in the Main Pass 77 Pipeline and Receiving Station facilities.

Southern states that the pipe it proposes to abandon by transfer to Chevron was severely damaged by Hurricane George in October 1998 and would be uneconomical for Southern to repair. Southern also states that Southern has agreed to give the pipe to Chevron following approval of the herein abandonment request so that Chevron could salvage the pipe if possible. Southern further states the proposed abandonment would not effect the capacity of its pipeline system or materially impact the availability of natural gas supplies on its system. Southern asserts that 30 shippers have the receipt point listed as a firm receipt point under their firm service agreement with Southern for a total Maximum Daily Quantity of 3,372 Mcf of natural gas per day; however, these shippers have not been able to obtain gas supplies from this receipt point since the damage occurred in October 1998. Chevron would either salvage the pipe or build a new pipe, and these shippers would be able to receive the Main Pass Block 77 gas at the interconnection of the Main Pass 77 Pipeline and Southern's Main Pass Block 151 facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 7, 1999, file with the Federal Energy Regulatory Commission, 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 NGA (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 NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on 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 Southern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6985 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–247–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

March 17, 1999.

Take notice that on March 10, 1999, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–247–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to use measuring, regulating and appurtenant facilities constructed for the delivery of Natural Gas Policy Act Section 311 transportation gas to MAPCO Natural Gas Liquid, Inc., a Williams affiliate, in McPherson County, Kansas, for purposes other than Section 311 transportation, under authorization issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at: http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Williams states that the cost of the facilities was approximately $156,880 and would be reimbursed by MAPCO through the subscription of firm transportation service.

Williams further states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–6986 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–248–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

March 17, 1999.

Take notice that on March 11, 1999, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–248–000 a request pursuant to Sections 157.205 and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the receipt of transportation of gas from MFP Petroleum Limited Partnership (MFP), successor to CNG Producing Company, and to reclaim facilities located in Harper County, Oklahoma under the blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Williams states that the meter setting has been blinded for some time and that MFP has agreed to the reclaim of facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is

filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6987 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–47–000, et al.]

The Cincinnati Gas & Electric Company et al. Electric Rate and Corporate Regulation Filings

March 15, 1999.

Take notice that the following filings have been made with the Commission:

1. The Cincinnati Gas & Electric Company

[Docket No. EC99–47–000]

Take notice that on March 9, 1999, The Cincinnati Gas & Electric Company (CG&E) tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b and Section 33.1(a)(1) of the Federal Energy Regulatory Commission's Regulations, 18 CFR 33.1(a)(1), its application for approval of the sale of 19 of its communication towers to an affiliated company, Cinergy Communications, Inc. (CCI).

CG&E states that it has served copies of its application upon the regulatory commission of Ohio.

Comment date: April 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission, Corporation, New England Hydro-Transmission, Corporation, New England Hydro-Transmission, Electric Company, Inc., and AllEnergy Marketing Company, L.L.C., NGG Holdings LLC

[Docket No. EC99–49–000]

Take notice that on March 10, 1999, New England Power Company (NEP), its affiliates holding jurisdictional assets (Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., and AllEnergy Marketing Company, L.L.C.) (collectively, the NEES Companies) and NGG Holdings LLC (NGG), submitted for filing an application under Section 203 of the Federal Power Act (16 U.S.C. § 824b) and Part 33 of the Commission's Regulations (18 CFR 33.1) seeking the Commission's approval and related authorizations to effectuate the merger of New England Electric System (NEES) the parent company of the NEES Companies, with NGG, a wholly-owned subsidiary of The National Grid Group plc (National Grid). NEES will be the surviving entity in the Merger and, through the Merger, it and the NEES Companies will become subsidiaries of National Grid, which, among other things, is the owner and operator of the electric transmission network in England and Wales.

The Application states that it includes all the information and exhibits required by Part 33 of the Commission's regulations and the Commission's Merger Policy Statement, and that the Merger Application easily satisfies the criteria set forth in the Commission's Merger Policy Statement. The Application requests that the Commission grant approval without condition, modification or an evidentiary, trial-type hearing. The Application states that the parties are seeking to close the Merger expeditiously and thus the Applicants have requested Commission approval by May 31, 1999.

The Applicants have served copies of the filing on the state commissions of Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. EGENOR S.A.

[Docket No. EG99–91–000]

Take notice that on March 10, 1999, EGENOR S.A. (EGENOR) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sixty percent of EGENOR, a Peruvian corporation, is owned by Inversiones Dominion Perú S.A. (IDP). A majority of the capital stock of IDP is owned by Dominion Holding Peru S.A.C., a Peruvian corporation, which in turn is owned by Dominion Energy, Inc. (DEI) and its wholly-owned subsidiary Dominion Energy Peru Holdings, Inc., both Virginia corporations. DEI is a wholly-owned subsidiary of Dominion Resources, Inc., also a Virginia corporation.

EGENOR will own and operate two run-of-river hydroelectric facilities and six combustion turbine/diesel generator facilities with a combined installed nameplate capacity of approximately 510 MW and associated wholesale and retail transmission interconnection facilities, all located in Peru.

Comment date: April 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Trust Created Under The Trust Agreement Dated As of June 15, 1978 For The Use And Benefit of PSEG Resources Inc., Sanwa Bank California, Trustee

[Docket No. EG99–92–000]

Take notice that on March 10, 1999, Sanwa Bank California, as Trustee of the Trust created Under the Trust Agreement dated June 15, 1978 for the Use and Benefit of PSEG Resources Inc. (the Trust), 601 South Fiqueroa Street, Los Angeles, CA 90017, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Trust owns and holds legal title to an electric generating facility known as Encina No. 5, located in San Diego, California. Encina No. 5 is a 330 (net) MW oil-and-gas-fired steam turbine electric generation plant. Encina No. 5 comprises part of the Encina Generating Station. San Diego Gas & Electric Company (SDG&E), a public utility, leases Encina No. 5 from the Trust under a long-term lease which grants SDG&E care, custody and control of the unit.

Comment date: April 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Entergy Services, Inc.

[Docket No. ER98–4410–000]

Take notice that on March 10, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy) filed its response to the February 8, 1999 letter in the above-referenced docket (Letter). The Letter requested additional information concerning

Entergy's August 31, 1998 and December 10, 1998 filings regarding a proposed amendment to its Open Access Transmission Tariff (OATT). The amendment revises OATT Attachment C, Methodology to Assess Available Transmission Capability, to continue Entergy's practice of using a transmission Reliability Margin to maintain native load reliability at a one-day-in-ten-year loss of load expectation.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PJM Interconnection, L.L.C.

[Docket No. ER99–1619–000]

Take notice that on March 10, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its January 29, 1999 filing.

Copies of this filing were served upon each of the transmission customers that are parties to the service agreements filed in this docket on January 29, 1999 and each party listed on the service list compiled by the Commission in this proceeding.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER99–2107–000]

Take notice that on March 10, 1999, Consumers Energy Company (Consumers) tendered for filing two Facilities Agreements Between Consumers Energy Company and CMS Generation Michigan Power, L.L.C., (Facilities Agreements). One of the Facilities Agreements is for CMS Generation Michigan Power L.L.C.'s Livingston Generating Station, the other for CMS Generation Michigan Power L.L.C.'s Kalamazoo River Generating Station. Under the Facilities agreements, Consumers is to construct, operate and maintain various interconnection facilities. Both Facilities Agreements are dated December 31, 1998.

Consumers requested that the Agreements be allowed to become effective by May 1, 1999.

Copies of the filing were served upon CMS Generation Michigan Power, L.L.C. and upon the Michigan Public Service Commission.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. LG&E Capital Corporation

[Docket No. ER99–2108–000]

Take notice that on March 10, 1999, LG&E Capital Corporation (Capital Corp.) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Petition for Blanket Authorization to Make Sales of Capacity and Energy at Market-Based Rates. Capital Corp. plans to own and operate two 164 megawatt combustion turbine electric generating units. These units will be the fifth and sixth units at Kentucky Utilities Company's existing E.W. Brown Generating Station in Mercer County, Kentucky.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Shell Energy Services Company L.L.C.

[Docket No. ER99–2109–000]

Take notice that on March 10, 1999, Shell Energy Services Company, L.L.C. (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is a wholly-owned indirect subsidiary of Shell Oil Company.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Nevada Power Company

[Docket No. ER99–2110–000]

Take notice that on March 10, 1999, Nevada Power Company (NPC) tendered for filing the proposed McCullough 230-kV Switchyard Agreement (Agreement). The parties to this Agreement are: Department of Water and Power of the City of Los Angeles (LADWP), NPC, and the United States of America (US).

The Agreement sets forth all the terms and conditions for the ownership, cost responsibility, operation, maintenance and use of the McCullough 230 kV Switchyard and three 500/230 kV transformer banks located at the McCullough Substation.

In addition to all the Parties to this Agreement, copies of this filing have also been served on the Public Utilities Commission of Nevada and the Bureau of Consumer Protection Utility Consumer's Advocate of Nevada.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER99–2111–000]

Take notice that on March 10, 1999, WPS Resources Corporation (WPSR) on behalf of its operating companies, Wisconsin Public Service Corporation and Upper Peninsula Power Company tendered for filing an executed Transmission Service Agreement for long term Firm Point-To-Point service between WPSC and Wisconsin Public Power, Inc. The Agreement provides for transmission service under WPS Resources Corporation FERC Electric Tariff Volume No. 1.

WPSC requests that the agreement become effective May 1, 2000.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER99–2112–000]

Take notice that on March 10, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing the Service Agreement for Short-Term Market Based Rate Power Sales between Virginia Electric and Power Company and Select Energy, Inc. Under the Service Agreement, Virginia Power will provide services to Select Energy, Inc. under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of March 10, 1999.

Copies of the filing were served upon Select Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Power Service Corp., on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2113–000]

Take notice that on March 10, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 18 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of March 9, 1999, to AYP Energy, Inc. and Carolina Light & Power Company.

Copies of the filing have been provided to the Public Utilities

Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–6982 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–50–000, et al.]

PacifiCorp., et al.; Electric Rate and Corporate Regulation Filings

March 16, 1999.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. EC99–50–000]

Take notice that on March 10, 1999, PacifiCorp (PacifiCorp) tendered for filing an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Regulations of the Commission for an order authorizing transfer of control of jurisdictional facilities and notice of change of status (the Transaction). Applicant has requested Commission approval of the Transaction as early as practicable.

Pursuant to the terms of the Restated and Amended Agreement and Plan of Merger dated as of February 24, 1999, a special purpose, wholly-owned subsidiary of ScottishPower plc, which is an Oregon corporation, will merge with and into PacifiCorp with PacifiCorp to be a surviving U.S. corporation. Each issued and outstanding share of PacifiCorp will be canceled upon consummation of the Transaction and converted to the right of the holder thereof to receive 0.58 ScottishPower American Depositary Shares, which are traded on the New York Stock Exchange, or 2.32 ScottishPower ordinary shares, which are traded on the London Stock Exchange. As a result of the Transaction, PacifiCorp will become a wholly-owned subsidiary of ScottishPower. PacifiCorp filed no Section 205 rate proceeding in this application, and states that the Transaction will change only PacifiCorp's corporate control, and have no impact on competition, rates or regulation.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Automated Power Exchange, Inc.

[Docket No. ER98–1033–006]

Take notice that on March 11, 1999, Automated Power Exchange, Inc., tendered its filing in compliance with the Commission's order issued in Docket No. ER98–1033–004.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Alliance Energy Services Partnership

[Docket No. ER99–1945–000]

Take notice that on March 11, 1999, Alliance Energy Services Partnership (Alliance Energy Services Partnership) petitioned the Commission for acceptance of Alliance Energy Services Partnership amended Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Alliance Energy Services Partnership intends to engage in wholesale electric power and energy purchases and sales as a marketer. Alliance Energy Services Partnership is not in the business of generating or transmitting electric power. Alliance Energy Services Partnership is wholly owned by: Alliance Gas Services, Inc., and Conoco Inc. Andrew R. Fellon and John McCord, each hold 50% ownership in Alliance Gas Services, Inc. Additionally, Andrew R. Fellon and John McCord each hold 50% ownership in Fellon-McCord & Associates, Inc. All parties are primarily engaged in natural gas marketing.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2114–000]

Take notice that on March 10, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 10–5 to add ACN Energy, Inc. and PEPCO Services, Inc. to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is March 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER99–2115–000]

Take notice that on March 10, 1999 The Dayton Power and Light Company (Dayton) submitted a service agreement for Short-Term Firm Transmission Service establishing Merrill Lynch Capital Services, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon Merrill Lynch Capital Services, Inc., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER99–2116–000]

Take notice that on March 10, 1999, The Dayton Power and Light Company (Dayton) submitted a Service Agreement for Non-firm Transmission Service establishing with Merrill Lynch Capital Services, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon with Merrill Lynch Capital Services,

Inc., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket Nos. ER99–2117–000]

Take notice that on March 11, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Southern Energy Delta, L.L.C. (Southern Delta and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Southern Delta and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of March 4, 1999.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER99–2118–000]

Take notice that on March 11, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Southern Energy Delta, L.L.C. (Southern Delta) for acceptance by the Commission.

The ISO states that this filing has been served on Southern Delta and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of March 4, 1999.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER99–2119–000]

Take notice that on March 11, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Southern Energy Potrero, L.L.C. (Southern Potrero) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Southern Potrero and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of March 4, 1999.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER99–2120–000]

Take notice that on March 11, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Southern Energy Potrero, L.L.C. (Southern Potrero) for acceptance by the Commission.

The ISO states that this filing has been served on Southern Potrero and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of March 4, 1999.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Avista Corporation

[Docket No. ER99–2121–000]

Take notice that on March 11, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreements under Avista Corporation's FERC Electric Tariff First Revised Volume No. 9, with Illinova Energy Partners, which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER98–4684–000 SA No 186 effective 8/29/98.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER99–2122–000]

Take notice that on March 11, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated February 5, 1999 (the Service Agreement) between Ameren Services Company (Ameren) and OVEC. The Service Agreement provides for non-firm transmission service by OVEC to Ameren. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of February 10, 1999, and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon the Arkansas Public Service Commission, the Illinois Commerce Commission, the Missouri Public Service Commission and Ameren.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER99–2123–000]

Take notice that on March 11, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to Dunbarton Energy Partners, Limited Partnership under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective March 29, 1999.

NUSCO states that a copy of this filing has been mailed to Dunbarton Energy Partners, Limited Partnership.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER99–2124–000]

Take notice that on March 11, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with MidAmerican Energy Company (MidAmerican, as a wholesale merchant) dated February 19, 1999, and First Amendment to Firm Transmission Service Agreement with MidAmerican, as wholesale merchant, dated February 22, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of February 22, 1999, for the Firm Transmission Service Agreement, and February 19, 1999 for the First Amendment, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corp.

[Docket No. ER99–2125–000]

Take notice that on March 11, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing

Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the Commission in this proceeding dated November 7, 1997. The Service Agreements for wholesale requirements services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Columbia Energy Power Marketing Corporation.

Niagara Mohawk requests that the agreements be made effective as of February 19, 1999.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Moon Lake Electric Association, Inc.

[Docket No. ER99–2126–000]

Take notice that on March 11, 1999, Moon Lake Electric Association, Inc. (Moon Lake), tendered for filing Amendment No. 1 and Revision No. 1 to Supplement No. 1, to its Rate Schedule FERC Nos. 3 through 5, under which Moon Lake provides transmission service to customers of PacifiCorp. The proposed amendment and revision provide for Moon Lake to furnish transmission service to two additional PacifiCorp customers as permitted by Supplement No. 1. The proposed amendments will not affect purchasers under other agreements.

Moon Lake seeks a waiver pursuant to 18 CFR 35.11 of the 60-day prior notice requirement of 18 CFR 35.3, to permit Amendment No. 1 and Revision No. 1 to become effective on May 4, 1994 and July 7, 1998, respectively.

Copies of the filing were served upon Moon Lake's purchasers in accordance with 18 CFR 35.11.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER99–2127–000]

Take notice that on March 11, 1999, Public Service Company of New Mexico (PNM), tendered for filing as an amendment to the San Juan Project Operating Agreement (Operating Agreement) an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP) and the other owners of interests in the San Juan Generating Station. This interim agreement effectively modifies Modification 8 to the Operating Agreement for an interim period from January 1, 1999 through December 31, 1999.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 1999.

Copies of this filing have been served upon the New Mexico Public Regulation Commission, TEP and each of the owners of an interest in the San Juan Generating Station.

Comment date: March 31, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. North West Rural Electric Cooperative

[Docket No. ES99–34–000]

Take notice that on March 10, 1999, North West Rural Electric Cooperative (NWREC), tendered for filing an application, under Section 204 of the Federal Power Act, for authorization to issue long-term debt up to $13.5 million, under a line of credit agreement with the National Rural Utilities Cooperative Finance Corporation, during a two-year period.

NWREC also requests that the Commission waive its competitive bidding or negotiated placement requirements of 18 CFR 34.2, pursuant to the authorization requested in this docket.

Comment date: April 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

STANDARD PARAGRAPHS

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–6983 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

March 17, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Non-Project Use of Project Lands and Waters.

b. Project No: 2232–383.

c. Date Filed: February 5, 1999.

d. Applicant: Duke Power Company.

e. Name of Project: Catawba-Wateree Hydroelectric Project.

f. Location: On Lake Norman near the Town of Springs, in Lincoln County, North Carolina. The project does not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. FERC Contact: Any questions on this notice should be addressed to Brian Romanek, e-mail address: Brian.Romanek@ferc.fed.us. or telephone: (202) 219–3076.

j. Deadline for filing comments and or motions: April 22, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, NE, Washington, DC 02426.

Please include the project number (2232–383) on any comments or motions filed.

k. Description of Proposal: Duke Power Company proposes to lease to Sailview Properties, LLC (Sailview) nine parcels containing a total of 4.91 acres of project land for the construction of 186 boat slips. The boat slips would provide access to the reservoir for residents of Sailview Subdivision. Constructing the boat slips would require the dredging of 9,900 cubic yards of lake bottom material.

l. Locations of the application: A copy of the application is available for

inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6991 Filed 3–22–99; 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 and Soliciting Comments, Motions To Intervene, and Protests

March 17, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Non-Project Use of Project Lands and Waters.

b. Project No.: 2232–384.

c. Date Filed: February 17, 1999.

d. Applicant: Duke Power Company.

e. Name of Project: Catawba-Wateree Hydroelectric Project.

f. Location: On Lake Norman near the Town of Mooresville, in Iredell County, North Carolina. The project does not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. FERC Contact: Any questions on this notice should be addressed to Brian Romanek, e-mail address: Brian.Romanek@ferc.fed.us. or telephone: (202) 219–3076.

j. Deadline for filing comments and or motions: April 22, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, NE., Washington, DC 20426.

Please include the project number (2232–384) on any comments or motions filed.

k. Description of Proposal: Duke Power Company proposes to lease to Southdell, Inc. a 0.323 acre parcel of project land for the construction of 8 boat slips. The boat slips would provide access to the reservoir for residents of Donaldson Landing Subdivision. Constructing the boat slips would require the dredging of 707 cubic yards of lake bottom material.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6992 Filed 3–22–99; 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 and Soliciting Comments, Motions To Intervene, and Protests

March 17, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Non-Project Use of Project Lands and Waters.

b. Project No: 2232–385.

c. Date Filed: February 23, 1999.

d. Applicant: Duke Power Company.

e Name of Project.: Catawba-Wateree Hydroelectric Project.

f. Location: On Lake Rhodhiss near the Town of Lovelady, in Burke County, North Carolina. The project does not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. FERC Contact: Any questions on this notice should be addressed to Brian Romanek, e-mail address: Brian.Romanek@ferc.fed.us. or telephone: (202) 219–3076.

j. Deadline for filing comments and or motions: April 22, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2232–385) on any comments or motions filed.

k. Description of Proposal: Duke Power Company proposes to lease to Southeastern Land Sales, Inc. (Harbor Ridge) a 0.70 acre parcel of project land for the construction of 28 boat slips. The boat slips would provide access to the reservoir for residents of the Harbor Ridge Subdivision. Constructing the boat slips would require no dredging. About 200 linear feet of rip rap would be installed to stabilize the shoreline.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6993 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–012]

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice Establishing Docketing Procedures for Filing of OBA Notification

March 17, 1999.

This notice establishes the docketing procedures pipelines must follow in making filings to comply with the Commission's order issued December 17, 1998,[1] in Docket No. RM96–1–012, requiring pipelines to file by April 1, 1999, a statement regarding compliance with Section 284.10(c)(2)(i) of the Commission's regulations.[2]

In Order No. 587–G, the Commission adopted Section 284.10(c)(2)(i) of its regulations, which requires each interstate pipeline to enter into operational balancing agreements (OBAs) at all points of interconnection between its system and the system of another interstate or intrastate pipeline.[3]

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, 85 FERC ¶ 61,371 (1998).

[2] 18 CFR 284.10(c)(2)(i).

[3] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR

Continued

In the December 17, 1998, order, the Commission established April 1, 1999, as the date by which pipelines are required to comply with this regulation and further required each interstate pipeline to file by April 1, 1999, a statement as to how it has complied with the OBA requirement.

In making their filings to comply with the December 17, 1998 order, each pipeline must file using the docket number under which they filed to comply with Order No. 587–G.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6994 Filed 3–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 30 Through December 4, 1998

During the week of November 30 through December 4, 1998, the decision and order summarized below was issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

A copy of the full text of this decision and order is available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. It is also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Date: March 15, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 114, Week of November 30 through December 4, 1998

Appeal

Doug Farver, 12/03/98, VFA–0455

The Department of Energy (DOE) issued a Decision and Order granting in part a Freedom of Information Act (FOIA) Appeal filed by Douglas Farver. In his Appeal, Mr. Farver requested that we review an Oak Ridge Operations Office (Oak Ridge) determination finding that a portion of Mr. Farver's FOIA request was too broad and, therefore, did not ''reasonably describe'' the information sought. In the Decision, the OHA held that Oak Ridge did not adequately justify this determination, and, in addition, did not respond to two items of Mr. Farver's original FOIA request. We therefore remanded the appeal to Oak Ridge for further processing.

Dismissals

The following submissions were dismissed.

Name	Case No.
Matthew Cherney, M.D.	VFA–0460

[FR Doc. 99–7066 Filed 3–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 23 Through November 27, 1998

During the week of November 23 through November 27, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: March 15, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 113 Week of November 23 Through November 27, 1998

Personnel Security Hearings

Personnel Security Hearing, 11/24/98, VSO–0198

A Hearing Officer found that the concern raised by an individual's illness or mental condition remained unresolved. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization not be restored.

Personnel Security Hearing, 11/23/98, VSO–0211

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to be granted access authorization under the provisions of 10 CFR part 710. The Hearing Officer found that the individual has a mental condition which causes or may cause a significant defect in his judgment or reliability. The Hearing Officer also found that the individual had been diagnosed by a board-certified psychiatrist as alcohol abusive. In addition, the Hearing Officer found that the individual had failed to mitigate concerns raised by seventeen years of falsifications regarding his drug use. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 11/23/98, VSO–0220

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended. The DOE alleged that the individual engaged in unusual conduct by violating a drug certification, stealing from his employer, and defrauding an insurance company by arranging the theft of his car. In addition, the DOE contended that the individual deliberately falsified significant information regarding past arrests and drug use. The Hearing Officer found that the individual had not overcome the security concerns of DOE with regard to his violation of the drug certification and that the individual had engaged in unusual conduct in his actions surrounding the theft of his car. In addition, the Hearing Officer found that the individual had not presented sufficient evidence to mitigate DOE's legitimate concerns arising from his falsifications. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be restored.

Personnel Security Hearing, 11/24/98, VSO–0222

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended. A DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse. In addition, the DOE alleged that the individual deliberately falsified significant information on a number of personnel security questionnaires. The Hearing Officer found that the individual had not overcome the security concerns of DOE with regard to his alcohol use. In addition, the Hearing Officer found that the individual had

20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

not presented sufficient evidence to mitigate DOE's concerns arising from his falsifications. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
N.Y. City Health & Hospital	RC272–00396 RJ272–00067	11/24/98

[FR Doc. 99–7067 Filed 3–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 16 Through November 20, 1998

During the week of November 16 through November 20, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: March 15, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 112 Week of November 16 Through November 20, 1998

Appeals

Alan Henney, 11/17/98, VFA–0454

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) received a request from the Department of Commerce asking DOE to provide a direct response to part of an Appeal filed by Alan Henney under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. OHA dismissed this Appeal. Under 10 CFR § 1004.8(a) of the DOE regulations, OHA does not have jurisdiction to adjudicate this matter, because there is no evidence that the decision to withhold documents in response to Mr. Henney's FOIA request was made by a DOE officer who has custody or responsibility for these records under the FOIA. Moreover, under 10 CFR § 1004.7(b), a legally sufficient denial of records under the FOIA has not been issued. OHA requested the FOIA/Privacy Act Division of the Office of the Executive Secretariat (DOE FOIA Office) to treat the Appeal as if it were a new request for documents under the FOIA.

Ruth Towle Murphy, 11/17/98, VFA–0453

The OHA denied an Appeal of a determination issued by the DOE's Office of Scientific and Technical Information in response to a request for a fee waiver. The requester claimed that her status as a graduate student, and her intention to incorporate the requested information into research for a dissertation, was sufficient to qualify her for a waiver of search and copying fees. The OHA found that the requester failed to show that she could disseminate the requested information to a broad enough audience to qualify for a fee waiver.

Personnel Security Hearing

Personnel Security Hearing, 11/16/98, VSO–0216

An Office of Hearings and Appeals Hearing Officer issued an Opinion under 10 CFR Part 710 concerning the continued eligibility of an individual. to hold an access authorization. The Hearing Officer found that the individual had failed to establish the truthfulness of his explanation for receiving a positive test result for the presence of cocaine metabolite in a urine sample provided by the individual pursuant to a random drug screening conducted by his employer. The Hearing Officer found that the individual had therefore failed to mitigate the legitimate security concerns of DOE relating to the use of illegal drugs. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Mercer County et al	RF272–96900	11/18/98
Raymond Canada et al	RC272–00395 RJ272–00066	11/19/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Carl Buddig & Co	RF272–95207
Glendale Union HS Dist 205	RF272–80846
Personnel Security Review	VSA–0214
S.A.D. #51	RF272–80837

[FR Doc. 99–7068 Filed 3–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by The Office of Hearings and Appeals; Week of November 9 Through November 13, 1998

During the week of November 9 through November 13, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: March 15, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 111 Week of November 9 Through November 13, 1998

Appeals

Frank E. Isbill, 11/10/98, VFA–0450

Frank E. Isbill (Isbill) filed an Appeal from a determination issued to him by the Oak Ridge Operations Office (OR) of the Department of Energy (DOE). In his Appeal, Isbill asserted that OR failed to conduct an adequate search for documents, requested pursuant to the FOIA, that pertained to various personnel records and complaints at the DOE's Office of Scientific and Technical Information (OSTI). After reviewing the search that was conducted for responsive documents, the DOE determined that OR had performed an adequate search. In reaching this determination, DOE also held that records held by two contractors at OSTI were not agency records subject to the FOIA nor were they subject to the DOE's policy on contractor records. Consequently, Isbill's Appeal was denied.

Ashok Kaushal, 11/13/98, VFA–0452

DOE denied an appeal of a determination issued by the Albuquerque Operations Office (DOE/AL). OHA found that the search conducted by DOE/AL was reasonably calculated to uncover material responsive to the request.

Tammi D. Mourfield Selvidge, et al., 11/12/98, VFA–0449

Tammi D. Mourfield Selvidge, et al., filed an appeal from a denial by the Oak Ridge Operations Office of a request for information that it filed under the Freedom of Information Act (FOIA). The DOE upheld a determination by Oak Ridge that no documents existed that were responsive to the request for a list of 100 specified substances. The DOE referred the appeal of denial of access to classified information to the appropriate office in the Office of Security Affairs, to be addressed in Case No. VFA–0451. The DOE did not address the remaining issues raised in the appeal because Oak Ridge had not yet issued complete determinations regarding them. Accordingly, the appeal was denied in part and dismissed in part.

Personnel Security Hearings

Personnel Security Hearing, 11/9/99, VSO–0219

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because the DOE obtained derogatory information that the individual was alcohol dependent. At a hearing convened at the individual's request, the individual maintained that he was rehabilitated from alcohol dependence. A DOE consultant psychiatrist found that the individual was in full remission from his alcohol dependence and had shown adequate evidence of rehabilitation. Other witnesses corroborated that the individual had not used alcohol for more than one year and that he was committed to his rehabilitation program. Based on this evidence, the Hearing Officer found that the individual had mitigated the DOE's concern regarding his alcohol dependence. Accordingly, the Hearing Officer recommended that the individual's access authorization be restored.

Personnel Security Hearing, 11/13/98, VSO–0226

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to be granted access authorization under the provisions of 10 CFR Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer first found that the individual has a mental condition which causes or may cause a significant defect in his judgment or reliability. The Hearing Officer also found that the individual has been a user of alcohol habitually to excess and had been diagnosed by a board-certified psychiatrist as alcohol dependent. This finding was based on the DOE consultant psychiatrist's diagnosis of alcohol dependence and opinion thatthere was insufficient evidence of rehabilitation and reformation. The individual's Employment Assistance Program counselor agreed with the DOE consultant psychiatrist that the individual was alcohol dependent and not yet rehabilitated. Accordingly, the Hearing Officer recommended that the individual not be granted access authorization.

Dismissals

The following submissions were dismissed.

Name	Case No.
Apex Oil Co./Clark Oil Co./Albert Burzinski.	RF342–00328

[FR Doc. 99–7069 Filed 3–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of October 26 Through October 30, 1998

During the week of October 26 through October 30, 1998, the decisions and orders summarized below were

issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: March 15, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 109, Week of October 26 through October 30, 1998

Appeals

Tod N. Rockefeller, 10/28/98, VFA–0447

Tod N. Rockefeller (Rockefeller), through his attorney, requested documents from DOE's Albuquerque Operations Office (AL) under the FOIA, and also asked that AL waive all fees. AL denied the request for a fee waiver, stating that the disclosure of the information was not in the public interest and that the request, since it was made by an attorney, was made for the attorney's commercial interest. Because Rockefeller had not shown an ability to disseminate the information to the public, the Office of Hearings and Appeals (OHA) concluded that the request was not in the public interest. However, OHA also noted that there was no evidence that the request was made for the attorney's commercial interest. Accordingly, the Appeal was denied.

Personnel Security Hearing

Personel Security Hearing, 10/29/98, VSO–0209

An Office of Hearings and Appeals Hearing Officer issued an opinion against restoration of the security clearance of an individual whose clearance had been suspended because the Department had obtained derogatory information that fell within 10 C.F.R. 710.8(k) & (1). In reaching his conclusion, the Hearing Officer found that the individual had failed to make a showing of mitigating facts and circumstances sufficient to overcome DOE's security concerns.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Arrow Trucking Co.	RF272–95745	10/27/98
William P. Johnson	RK272–04853	10/27/98
Russell Hosiery Mill	RK272–04855	
Johnston Industries Alabama	RK272–04857	
Marilyn Barnes	RK272–04859	
Putnam Asphalt Corp.	RK272–04864	

Dismissals

The following submissions were dismissed.

Name	Case No.
Personnel Security Hearing	VSO–0239

[FR Doc. 99–7070 Filed 3–22–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6313–2]

Annual Conference on Analysis of Pollutants in the Environment

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The U.S. EPA, Office of Water, Office of Science and Technology will co-sponsor, along with Battelle, the ''22nd Annual Conference on Analysis of Pollutants in the Environment'' to discuss all aspects of environmental measurement. The conference is open to the public.

DATES: The annual conference will be held on June 2–3, 1999. On June 2, 1999 the conference will begin at 8:30 a.m. and adjourn at 5:00 p.m. On June 3, 1999 the conference will begin at 8:45 a.m. and adjourn at 4:15 p.m.

On June 4, 1999 a workshop sponsored by Horizon Technology, Inc. will be held in addition to the conference. The workshop topic and program times are: Implementation of EPA Method 1664 for Oil and Grease Testing Workshop, June 4, 1999, 8:30 a.m. to 3:00 p.m.

ADDRESSES: The conference will be held at the Wyndham Franklin Plaza Hotel, 17th & Race Streets, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Conference and workshop arrangements are being arranged by Battelle. For information on registration, hotel rates, transportation, social events, and reservations call the Battelle coordinator, Lynn McLeod, at (781) 952–5381. If you have technical questions regarding the conference program, contact the EPA coordinator, Cindy Simbanin, at (202) 260-5019 or by facsimile at (202) 260–7185.

SUPPLEMENTARY INFORMATION: The 22nd Annual Conference on Analysis of Pollutants in the Environment is designed to bring together representatives of regulated industries, commercial environmental laboratories, state and federal regulators, and environmental consultants and contractors to discuss all aspects of environmental measurement with a particular focus on analytical methods and related issues.

The draft program for the conference follows:

Wednesday, June 2, 1999

Welcome and Status of EPA Office of Water Activities

8:30 am Welcome—Carlton Hunt, Battelle

8:45 am U.S. EPA's Office of Water Activities—James Hanlon, U.S. EPA Office of Science & Technology

9:00 am U.S. EPA's Wastewater Analytical Program Activities—William Telliard, U.S. EPA Office of Science & Technology

9:30 am U.S. EPA's Drinking Water Analytical Program Activities—Richard Reding, U.S. EPA Technical Support Center

10:00 am Break

Cryptosporidium

10:15 am Validating and Implementing Method 1622 to Monitor for Protozoa in Surface Water—Kevin Connell, DynCorp, Inc. Information & Enterprise Technology

10:45 am Development of Methods for Determination of Cryptosporidium in Wastewater and Sewage—Zia Bukhari, Clancy Environmental Consultants, Inc.

Inorganics

11:15 am Total Cyanide by Flow Injection, UV Digestion, and Amperometric Detection—Mike Straka, OI Analytical

11:45 am Lunch

1:15 pm Analytical Challenges with Determination of Perchlorate in Environmental Matrices—Andrew Eaton, Montgomery-Watson Laboratories

National Fish Study

1:45 pm U.S. EPA's National Study of Chemical Residues in Lake Fish Tissue—Jane Farris, U.S. EPA Health & Ecological Criteria Division

Organics

2:15 pm Extraction and Cleanup Procedures Used In the Columbia River Inter-Tribal Fish Commission Study—Robert Rieck, U.S. EPA Manchester Laboratory

2:45 pm Break

3:00 pm Low Detection Limit Methods for the Determination of VOCs in Air and Water as Applied in the USGS National Water Quality Assessment (NAWQA) Program—J. F. Pankow, Oregon State University

3:30 pm CDD/CDF Patterns in Industrial Discharges—Dale Rushneck, Interface, Inc.

4:00 pm Stability of VOC and SVOC Analytes in Environmental Samples—O.R. West, Oak Ridge National Laboratory

4:30 pm Drugs in Sewage Treatment Plant Effluents in Canada and Germany—Chris Metcalfe, Environmental and Resource Studies, Trent University, Peterborough, Ontario, Canada

5:00 pm Adjourn

Thursday, June 3, 1999

Detection and Quantitation

8:45 am Detectability of Semi-Volatile Pollutants by GCMS with Software Thresholds ''On and Off''—Bruce Colby, Pacific Analytical, Inc.

Whole-Effluent Toxicity (WET)

9:15 am Procedures for Identifying Probable False Positives in Whole Effluent Toxicity Data—Timothy F. Moore, Risk Sciences

9:45 am QC of WET Methods—(Speaker to be announced)

10:15 am Break

10:30 am A State's Perspective on WET Methods—(Speaker to be announced)

11:00 am U.S. EPA's Position on WET Methods—Stephen Sweeney, U.S. EPA Office of General Counsel

Metals

11:30 am Mercury in the Environment and Selection of Appropriate Analytical Methods for Monitoring Needs—Anna Rule, Hampton Roads Sanitation District

12 Noon Lunch

1:30 pm A Critical Need for the New Millennium: Reliable U.S. EPA-Approved Trace Metals Speciation Methods—Nicolas Bloom, Frontier Geosciences, Inc.

2:00 pm Direct Speciation of Selenium and Other Metalloids in Aqueous Samples—Implications for Research and Remediation—D. Wallschlaeger, Frontier Geosciences, Inc.

2:30 pm Determination of Hydride-Forming Elements at U.S. EPA Ambient Water Quality Criteria Levels by Hydride Generation and Graphite Furnace Atomic Absorption Spectrophotometry—Khouane Ditthavong, U.S. EPA Office of Science & Technology

3:00 pm Break

3:15 pm Supplementary Effluent Data and Regulatory Status of U.S. EPA Method 1631: Mercury by Purge and Trap, Desorption, and Atomic Fluorescence—Maria Gomez-Taylor, U.S. EPA Office of Science & Technology

3:45 pm Application of ICP/MS Technology for Trace Metals Analysis—Paula Hogg, Hampton Roads Sanitation District

4:15 pm Closing Remarks

Dated: March 12, 1999.

James Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 99–7082 Filed 3–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6313–3]

Gulf of Mexico Program—Habitat Focus Team Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Habitat Focus Team (HFT).

DATES: The HFT meeting will be held on Thursday, April 15, 1999 from 10:00 a.m. to 5:00 p.m. and on Friday, April 16 from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting site will be the River House Conference Facility, Stennis Space Center, MS, (228) 688–7618.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Habitat Focus Team Updates, Baseline Characterization, Permit Issue, Strategic Assessment, Gulf of Mexico Conservation Fund/National Fish and Wildlife Foundation and other Habitat Focus Team State Initiatives.

The meeting is open to the public.

Dated: March16, 1999.

Bryan O. Griffith,

Acting Director, Gulf of Mexico Program Office.

[FR Doc. 99–7083 Filed 3–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–1]

Waste Research Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the Office of Research and Development's ''Waste Research Strategy.''

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of a research strategy entitled, ''Waste Research Strategy.'' The ''Waste Research Strategy'' covers research necessary to support both the proper management of solid and hazardous wastes and the effective remediation of contaminated

waste sites. This research includes improving the assessment of existing environmental risks, as well as developing more cost-effective ways to reduce those risks. Prepared by EPA's Office of Research and Development (ORD), the strategy responds to two major legislative mandates and large programs within the EPA, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or ''Superfund'') and their amendments. This strategy identifies four research areas that correspond to the major waste-related environmental problems (contaminated ground water, contaminated soils and the vadose zone [subsurface region above the ground water table], emissions from waste combustion facilities, and active waste management facilities). The strategy prioritizes research activities that ORD should undertake through Fiscal Year 2000 (FY00).

ADDRESSES: An electronic version of the ''Waste Research Strategy'' is accessible via the Internet at *http://www.epa.gov/ORD/WebPubs/final* and is downloadable in Adobe Acrobat format. Interested parties can obtain a single copy of the report by contacting EPA's National Service Center for Environmental Publications (NSCEP) at (800) 490–9198. When contacting NSCEP, please provide your name and mailing address, and request publication number EPA/600/R–98/154 dated February 1999. There are a limited number of paper copies available from the above source, and requests will be filled on a first-come first-served basis. After the supply is exhausted, copies of the report can be purchased by contacting the National Technical Information Service (NTIS) at (703) 605–6000, or by sending a facsimile to (703) 605–6900.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin L. Blaney, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, telephone (513) 569–7852.

Dated: March 16, 1999.

Calvin O. Lawrence,

Acting Director, National Risk Management Research Laboratory.

[FR Doc. 99–7086 Filed 3–22–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303-2713:

1. GNB Holdings Trust, Miami, Florida, and David Warren Sloan, Westen, Connecticut, as trustee; to acquire 100 percent of the voting shares of Eagle National Holding Company, Miami, Florida, and thereby indirectly acquire voting shares of Eagle National Bank of Miami, Miami, Florida.

Board of Governors of the Federal Reserve System, March 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6946 Filed 3–22–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Hudson City MHC and Hudson City Bancorp Inc., both of Paramus, New Jersey; to become bank holding companies by acquiring 100 percent of the voting shares of Hudson City Savings Bank, Paramus, New Jersey.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Iowa Community Bancorp, Inc., Creston, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Union-Adams Bancorp, Creston, Iowa, and thereby indirectly acquire Iowa State Savings Bank, Creston, Iowa.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Swedish-American Bancshares, Inc., Courtland, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Swedish-American State Bank, Courtland, Kansas.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cullen/Frost Bankers, Inc., San Antonio, Texas; to merge with Commerce Financial Corporation, Fort Worth, Texas, and thereby indirectly acquire Bank of Commerce, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, March 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6947 Filed 3–22–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. F&M Bancorporation, and F&M Merger Corporation, Kaukauna, Wisconsin; to acquire 100 percent of the voting shares of CBE, Inc., Elkhorn, Wisconsin, and thereby indirectly acquire Community Bank of Elkhorn, Elkhorn, Wisconsin.

Board of Governors of the Federal Reserve System, March 18, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7099 Filed 3–22–99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE BOARD

Sunshine Act

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, March 29, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–7224 Filed 3–19–99; 3:38 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Committees; Notice

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit nominations for membership on the National Committee on Vital and Health Statistics (NCVHS). The NCVHS is the statutory public advisory body to the U.S. Department of Health and Human Services in the areas of health data policy, data standards, health information privacy and population-based data. The Committee has been assigned new advisory responsibilities in health data standards and health information privacy as a result of the Health Insurance Portability and Accountability Act of 1996.

One or more vacancies are expected to occur on the Committee as of June 1999. New members of the Committee will be appointed to terms of up to four years by the Secretary of Health and Human Services from among persons who have distinguished themselves in the following fields: health statistics, electronic interchange of health care information, privacy and security of electronic information, population-based public health, purchasing or financing health care services, integrated computerized health information systems, health services research, consumer interests in health information, health data standards, epidemiology, and the provision of health services.

In appointing members, the Department will give close attention to equitable geographic distribution and to minority and female representation. Appointments will be made without discrimination on the basis of age, race, gender, sexual orientation, HIV status, cultural, religious or socioeconomic status.

DATES: Nominations for new members should include a letter describing the qualifications of the nominee and the nominee's current resume or vitae. The closing date for nominations is May 7, 1999.

Nominations should be sent to the person named below.

James Scanlon, Executive Secretary, HHS Data Council, U.S. Department of Health and Human Services, Room 440–D, 200 Independence Avenue SW., Washington, DC 20201, (202) 690–7100

FOR FURTHER INFORMATION CONTACT: James Scanlon (202) 690–7100 or Marjorie Greenberg (301) 436–4253. Additional information about the NCVHS, including the charter, current roster, organization, and previous recommendations and reports is available on the NCVHS website: http://www.aspe.os.dhhs.gov/ncvhs.

SUPPLEMENTARY INFORMATION: The National Committee on Vital and Health Statistics serves as the statutory public advisory body to the Department of Health and Human Services in the area of health data policy. In that capacity, the Committee, which will celebrate its 50th anniversary in 2000, provides advice and assistance to the Department on a variety of key health data issues, including health data standards, privacy, population-based-data, and national health information infrastructure issues.

The Committee also provides advice to HHS on the implementation of the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996. The Committee consists of 18 members: Of the 18 members, one is appointed by the Speaker of the House of Representatives after consultation with the minority leader of the House of

Representatives; one is appointed by the President pro tempore of the Senate after consultation with the minority leader of the Senate, and 16 are appointed by the Secretary of Health and Human Services.

Dated: March 1, 1999.

Margaret A. Hamburg

Dated: March 12, 1999.

John M. Eisenberg,

Cochairpersons, HHS Data Council.

[FR Doc. 99–6945 Filed 3–22–99; 8:45 am]

BILLING CODE 4151–04–M

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; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 1, 1999, the comment period for the draft standard memorandum of understanding entitled ''Memorandum of Understanding on Interstate Distribution of Compounded Drug Products'' (draft standard MOU) that States may enter into with FDA. FDA published a notice of availability of the draft standard MOU in the **Federal Register** of January 21, 1999 (64 FR 3301). The agency is taking this action in response to a request for an extension.

DATES: Written comments on the draft standard MOU may be submitted by June 1, 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: Fred Richman, Center for Drug Evaluation and Research (HFD–332), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855–2737, 301–827–7292.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 21, 1999 (64 FR 3301), FDA published a notice announcing the availability of a draft standard MOU that States may enter into with FDA. The draft standard MOU 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, under provisions of the Food and Drug Administration Modernization Act of 1997. Interested persons were given until March 22, 1999, to submit written comments on the draft standard MOU.

FDA received a letter dated February 12, 1999, from the South Carolina Board of Pharmacy (the Board) requesting that the agency extend the comment period on the draft standard MOU by 60 to 120 days to allow the Board time to finalize and submit its comments and for other State boards of pharmacy to respond to those comments.

In response to this request, FDA has decided to extend the comment period on the draft standard MOU to June 1, 1999.

Interested persons may, on or before June 1, 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 should 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: March 17, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7056 Filed 3–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–10 & HCFA–1513]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. 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.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements Contained in BDP–718: Advanced Directives (Medicare and Medicaid) and Supporting Regulations in 42 CFR 417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 434.28, 483.10, 484.10, 489.102;

Form No.: HCFA–R–10 (OMB# 0938–0610);

Use: Certain Medicare and Medicaid organizations are responsible for collecting and documenting, in medical records, whether or not an individual has executed an advanced directive. This document indicates the individual's preference if he/she is incapacitated;

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 35,905;

Total Annual Responses: 35,905;

Total Annual Hours: 908,250.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Disclosure of Ownership and Financial Control Interest Statement and

Supporting Regulations in 42 CFR 420.200–420.206, 455.100–455.106;

Form No.: HCFA–1513 (OMB# 0938–0086);

Use: The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes;

Frequency: Other (every 1 to 3 years);

Affected Public: Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 125,000;

Total Annual Responses: 125,000;

Total Annual Hours: 62,500.

To obtain copies of the supporting statement 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 and phone number, 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 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 25, 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. 99–6968 Filed 3–22–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1100–N]

RIN 0938–AJ49

Medicare Program; Medicare Coordinated Care Demonstration Project and Request for Information on Potential Best Practices of Coordinated Care

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

ACTION: Solicitation of information.

SUMMARY: This notice announces our intent to conduct the Medicare Coordinated Care Demonstration. It informs interested parties of the opportunity to submit information on examples of best practices of coordinated care, as well as comment on potential aspects of the overall Medicare Coordinated Care demonstration.

Section 4016 of the Balanced Budget Act of 1997 requires a review of best practices and, following this assessment, a Medicare Coordinated Care Demonstration to be launched by August 1999.

The purpose of the demonstration is to evaluate models of coordinated care that improve the quality of services furnished to specific beneficiaries and reduce expenditures under Parts A and B of the Medicare program.

EFFECTIVE DATE: Information and comments will be considered if we receive them at the address provided below, no later than 5 p.m., June 21, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Mathematica Policy Research, Inc., Attn: Ms. Kristin LaBounty, P.O. Box 2393, Princeton, NJ 08543–2393.

Comments may also be submitted electronically to Ms. LaBounty's e-mail address (Klabounty@mathematica-mpr.com). Electronically submitted comments should not include attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1100–N.

FOR FURTHER INFORMATION CONTACT: Kathy Headen, Acting HCFA Project Officer, (410) 786–9253 or Kristin LaBounty, (609) 275–2263.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4016 of the Balanced Budget Act of 1997 (Public Law 105–33) requires the Secretary of Health and Human Services (the Secretary) to evaluate best practices in the private sector for methods of coordinated care. The statute also directs the Secretary to design demonstration projects for the Medicare fee-for-service population based on the evaluation. The purpose of the demonstration is to evaluate models of coordinated care that improve the quality of services provided to specific beneficiaries who have a chronic illness and reduce expenditures under Parts A and B of the Medicare program.

We competitively awarded a task order for conducting a review of best practices in coordinated care and for providing a recommendation of demonstration design options to Mathematica Policy Research, Inc. (MPR). We will perform the final assessment of best practices and select the demonstration design.

II. Provisions of This Notice

This notice announces our intent to conduct the Medicare Coordinated Care Demonstration and informs interested parties of the opportunity to submit information on potential best practices of coordinated care. In addition, this notice also requests comments on potential aspects of the overall demonstration. We are looking for information on successful models of coordinated care, disease management, or case management that are appropriate for the Medicare fee-for-service population.

Information about, and evidence of, successful models can be found in published literature; however, published literature is likely to be a limited resource and successful programs may not have been documented. Therefore, we would like to give interested parties the opportunity to submit information about models of coordinated care that are known to have achieved measurable success but may not have been discussed in published literature.

We anticipate this information will complement the review being conducted by MPR. Additional information regarding MPR's review can be found on their website (www.mathematica-mpr.com/projects/bestpractices).

Any person or organization may submit information about successful programs; however, the information must provide evidence of success in sufficient detail to be useful. Therefore, operators of programs may be in the best position to submit information regarding their approach. The following items of information should be submitted:

- The name and address of the program.
- The name, address, telephone number, facsimile number, and e-mail address of a contact person.
- Background on the program (including goals, history, relationship to larger organization(s), number of clients served, and length of time the program has been in operation).
- Special or innovative features of the program.
- Size and composition of the staff (number of RNs and number of social workers performing case management).

• Referral sources, targeting criteria, and selection criteria, if any, for participants.

• The patients served by the program (including age ranges, diagnoses or conditions, and functional impairments).

• Program intervention and how services differ from the usual care the patient would have received.

• How care plans are developed and monitored for each patient.

• Patient education efforts, if any.

• Patient monitoring efforts, if any.

• Feedback to providers, if any.

• Average length of time patient is in the program.

• Funding source(s) for the program.

• Financial incentives, if any, for providers and patients to participate.

• Outcome measures by which the program's performance is evaluated (including clinical, utilization, client-reported, and financial measures used).

• Program impacts on these measures.

• Cost savings due to the program (total and per person served per month).

• How program impacts and cost savings were calculated (for example, method of estimating reduction in use and costs, such as comparison to control group or prior year experience).

• Costs of operating the program (average per patient per month costs).

• Adaptability of the program to the Medicare fee-for-service setting.

• Program brochures or published articles, if any.

We are also interested in comments on potential aspects of the overall demonstration. Specifically, we are interested in comments that discuss and distinguish program characteristics known to be essential for positive outcomes in a fee-for-service setting. Commenters may also wish to address the types of providers, organizations, or entities capable of, and qualified to provide, coordinated care or case management services. Other aspects of importance include, but are not limited to:

• The relationship of the case management entity with other providers.

• The potential role of the case manager in authorizing or providing services beyond coordinating and educational activities.

• Appropriate incentives for the case management entity, beneficiaries, and other providers.

• Appropriate payment methodology.

• Potential risk bearing arrangements for the case management entity.

In addition, we seek comments regarding challenges to, and potential solutions for, implementing a coordinated care demonstration in rural sites.

We currently envision evaluating the data using a multi-tiered review process that will focus on structure, process, and outcomes. Review of individual programs will include the following review criteria:

• Programs that are currently functioning.

• Programs that decrease health care costs or utilization without adversely affecting health outcomes or that improve health outcomes without increasing health care costs or utilization.

• Programs that are suitable for the Medicare fee-for-service population.

• Programs that are targeted to common diseases in the Medicare population.

We will also examine a program's structural characteristics and specific features of its program interventions.

Responders should submit written information or comments to the above address. We encourage the public to submit information or comments as soon as possible to permit the maximum amount of time for consideration. Written information or comments received by 5 p.m., June 21, 1999, will be considered in drafting the demonstration design recommendations. Given the timeline for establishing this demonstration, there will not be sufficient time to consider information or comments received after this deadline.

III. Collection of Information Requirements

Section II of this notice contains information collection requirements that were approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 on January 5, 1999. The approval number is 0938–0750 and the expiration date is June 30, 1999.

Authority: Section 4016 of the Balanced Budget Act of 1997 (Public Law 105–33).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 16, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–7079 Filed 3–22–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review: Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Health Service Corps Waiver Request Worksheets—In Use Without Approval

The National Health Service Corps (NHSC) of HRSA's Bureau of Primary Health Care (BPHC) assists underserved communities through the development, recruitment and retention of primary health care clinicians dedicated to serving people in health professional shortage areas. The Public Health Service Act, Section 334 (b) contains provisions which permit a waiver of the reimbursement requirement for entities which are assigned Corps members. The Waiver Request Worksheets are used to collect the necessary information from sites which are requesting a waiver of the mandated reimbursable costs.

Estimates of the annualized reporting burden are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Billing form	750	1	750	15 minutes	188
Budget form	450	1	450	1	450
Total			1,200		638

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 17, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–6951 Filed 3–22–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 64 FR 11478 dated March 9, 1999). This notice reflects the position title change in the Office of Field Operations.

I. Under Part R, HRSA, Office of Field Operations, (RE), Field Cluster Operations (RF), change the title of Field Coordinators to Field Directors. All duties and responsibilities will remain the same.

Section RF–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This position title change is effective upon date of signature.

Dated: March 12, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–6950 Filed 3–22–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Charles Maynard, J.D., M.P.H., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057 ext. 243; fax: 301/402–0220; e-mail: cm251n@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Adipose Seven Transmembrane Domain Protein

C Montrose-Rafizadeh (NIA), C–F Yang
DHHS Reference No. E–213–97/1 filed June 19, 1998

This technology relates to the discovery and isolation of a novel cDNA clone from mouse adipocytes. This invention comprises the identification and isolation of receptors from extra-pancreatic tissues. More specifically, this invention has identified and isolated a novel cDNA clone from mouse adipocytes that appears to be involved in glucose tolerance/intolerance. Clone A contains seven transmembrane domains, designated I through VII. Experiments in human, rat and mice tissues indicates that clone A may be a critical component in the glucose intolerance associated with aging and diabetes. This invention further provides vectors such as plasmids comprising a DNA molecule encoding clone A, adapted for expression in a bacterial cell, a yeast cell, an insect cell or a mammalian cell which additionally comprises the regulatory elements necessary for the expression of the DNA in the bacterial, yeast, insect or mammalian cells operatively linked to the DNA encoding clone A to permit expression thereof.

Methods and Compositions for Reducing Ischemic Injury of the Heart by Administering Adenosine A_3 and Adenosine A_1 Receptor Agonists

KA Jacobson, BT Liang (NIDDK
DHHS Reference No. E–006–98/0 filed May 9, 1997

This technology relates to methods of administering compounds to protect the heart from ischemic injury. In particular, this invention provides agonists which selectively activate adenosine A_3 and A_1 receptors simultaneously, thereby enhancing the protective effects of preconditioning and rendering the myocardium more resistant to ischemia. This invention involves administration of specific A_1 and A_3 agonists during ischemic attacks, or at risk for ischemic damage. The agonists of the invention may be delivered prior to a surgical procedure, and may also be administered to a patient to prevent or reduce the severity of ischemic damage during surgery. Additionally, the A_3/A_1 agonists may be administered following surgical procedures to reduce the risk of post-surgical ischemic complications. The A_3 and A_1 agonists may be administered to patients with agina, which may be chronic and stable, unstable or due to post-myocardial infarction.

Methods and Compositions for Protecting Against Cardiac Ischemia by Administering Adenosine A_{2a} Receptor Antagonists

KA Jacobson, BT Liang (NIDDK)
Serial No. 08/813,787 filed March 7, 1997

This technology relates to methods of administering compounds to protect the heart from ischemic injury. In particular, this invention provides antagonists, which selectively inhibit activation of A_{2a} receptors thereby enhancing the protective effects of preconditioning and rendering the heart more resistant to ischemia. This invention involves administration of a specific A_{2a} antagonist to patients

during ischemic attacks, or at risk for ischemic damage. The antagonists of this invention may be delivered prior to a surgical procedure. They may also be administered to a patient to prevent or reduce the severity of ischemic damage during surgery. Additionally, the A_{2a} antagonists may be administered following surgical procedures to reduce the risk of post-surgical ischemic complications. The A_{2a} antagonists may be administered to patients with angina, which may be chronic and stable, unstable or due to post-myocardial infarction.

Treatment of Stroke and Neurodegeneration

DK Von Lubitz, KA Jacobson (NIDDK)
DHHS Reference No. E–023–96/0 filed April 10, 1996

This technology relates to a method of using certain adenosine amine congeners in the prevention and treatment of brain damage caused by ischemia, hypoxia, and anoxia. The present invention provides a method of treating ischemic, hypoxic, or anoxic brain damage in an animal, particularly a human, comprising administering to an animal recently afflicted with ischemic, hypoxic, or anoxic brain damage, or an animal in imminent danger of suffering ischemic brain damage, a therapeutic does of adenosine or structural analogues of ADAC.

The present invention is predicated on the surprising discovery that ADAC is effective for post-ischemic neuropreservation in the brain at concentrations at least 10-fold lower than other A1 adenosine receptor selective agonists previously studied. At these doses, cardiovascular side effects are not observed in experimental animals.

Method of Treating Ischemic, Hypoxic, and Anoxic Brain Damage

DK Von Lubitz, KA Jacobson (NIDDK)
DHHS Reference No. E–023–96/1 filed May 9, 1996

This technology relates to a method of using certain adenosine amine congeners in the prevention and treatment of brain damage caused by ischemia, hypoxia, and anoxia. The present invention provides a method of treating ischemic, hypoxic, or anoxic brain damage in an animal, particularly a human, comprising administering to an animal recently afflicted with ischemic, hypoxic, or anoxic brain damage, or an animal in imminent danger of suffering ischemic brain damage, a therapeutic dose of adenosine or structural analogues of ADAC.

The present invention is predicated on the surprising discovery that ADAC is effective for post-ischemic neuropreservation in the brain at concentrations at least 10-fold lower than other A1 adenosine receptor selective agonists previously studied. At these doses, cardivascular side effects are not observed in experimental animals.

Dated: March 15, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–6952 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Comments Meeting on a Proposed Hematopoietic Cell Transplant Network

Notice is hereby given of the NIH Public Comments Meeting on a Proposed Hematopoietic Cell Transplant Network which will be held Tuesday, April 6, 1999 in the Lister Hill Auditorium of the National Library of Medicine, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. The conference begins at 8:30 a.m. on April 6.

The purpose of this meeting is to discuss a joint NHLBI/NCI effort to provide an opportunity for collaborative studies in hematopoietic cell transplantation. The objective is to organize a network of transplant centers to review current progress, design and conduct a definitive clinical trials, generate and analyze data, and provide information to physicians, scientists, and the public. This resource will establish an infrastructure to expeditiously perform multi-center clinical trials, and improve therapies. It is hoped that the meeting will address the merits of the transplant network, recommendations as to the best structure and procedures to accomplish the desired goals, and suggestions as to the development and prioritization of studies to improve hematopoietic cell transplantation as a treatment for various diseases. The plan is to be flexible to the needs of the transplant centers, and it will be tested for 5 years. It is not intended to replace the R01 or P01 grant mechanisms.

Hematopoietic cell transplantation is a curative therapy for a variety of hematologic diseases. In recent years, the number of transplant centers has increased, but there has been no simple mechanisms for collaboration among them to address potentially pivotal clinical questions. While promising techniques have been tried, and encouraging pilot data obtained, definitive collaborative studies to improve efficacy and reduce toxicity have not been initiated in many areas.

Frequently, clinical trials in this field have been performed at single institutions without controls, or used historic controls for comparison, or were retrospective and used matched contemporary controls. These kinds of studies are useful to generate hypotheses, and while a well-designed ''Phase II'' trial may be persuasive, the ''gold standard'' remains prospective, randomized, controlled trials, which are more difficult to perform. Not only is patient accrual hampered by investigator bias, competing protocols, rapidly changing technologies, and public perception, but many of the conditions treated are not prevalent. Even large medical centers may not have enough subjects for this type of study, and a mechanism to facilitate collaboration with other investigators is needed.

This project attempts to address these issues, and is expected to provide a coordinated, flexible mechanism to accept ideas and build consensus from the transplant community, which will develop protocols for prompt evaluation. Furthermore, the role of physician bias and media hype in hampering accrual should be addressed by beginning randomized studies early, and posting data from completed trials, ancillary analyses, and interpretations on Webpages for public review. The implementation of this project will create a ''win-win'' situation for physicians, patients, federal agencies, and healthcare organizations.

NHLBI and NCI propose to use a standard NIH competitive mechanism to support this network.

The goal is to test new approaches generated by R01/P01 grants in a timely fashion through definitive trials, based on sound experimental designs. A national transplant trials group would be open to everyone, and accept input on how to prioritize the clinical trials.

All interested individuals are invited to attend the public comments meeting. NIH staff will explain the purpose of the network, solicit comments, and answer questions. Directions to the building and information about accommodations in the area are available upon request.

Individuals wishing to provide oral comments at the meeting, or to provide written comments, should contact: Henry Chang, M.D., Director, Blood Resources Program, NHLBI, Division of Blood Diseases and Resources, MSC 7950, 6701 Rockledge Dr., Room 10170,

Bethesda, MD 20892–7950, Phone: 301–435–0067, FAX: 301–480–1060, E-Mail: changh@nih.gov.

Dated: March 8, 1999.

Barbara Alving,

Director, Division of Blood Diseases and Resources.

[FR Doc. 99–6954 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Evaluation of Chemopreventive Agent by in Vitro Techniques.

Date: March 29, 1999.

Agenda: To review and evaluate contract proposals.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852.

Contact Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6955 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: April 29–30, 1999.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Virginia P. Wray, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6130 Executive Boulevard—Room 635, Rockville, MD 20895–7405, 301/496–9236.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6960 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee; National Cancer Institute Special Emphasis Panel, Development and Application of Imaging in Therapeutic Studies.

Date: April 21–22, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ray Bramhall, Phd, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6961 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 concern individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, General Clinical Research Centers Review Committee.

Date: April 14, 1999.

Time: 7:30 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: Marriott Hotel Portland, 1401 S.W. Front Avenue, Portland, OR 97201.

Contact Person: Bela J. Gulyas, PhD., Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892, 301–435–0811.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6962 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: March 26, 1999.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892.

Contact Person: Andrew P. Mariani, Phd., Chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

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. 93.867, Vision Research, National Institute of Health, HHS)

Dated: March 11, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6956 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences, 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), Titles U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, R13 Review Meeting.

Date: March 29, 1999.

Time: 4:30 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Patrick J Mastin, Phd, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

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. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Health and Safety Training; 93.143, HIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Heath, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 99–6957 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Mental Health Special Emphasis Panel.

Date: April 5, 1999.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 6, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Monica F. Woodfork, Grants Technical Assistant, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 6, 1999.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd.,

Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6959 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK, BSC Meeting.

Date: May 5–7, 1999.

Time: May 5, 1999, 6:00 PM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Contact Person: Allen M. Spiegel, MD, Dir. Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6963 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 could constitute a clearly unwarranted invasion of personal privacy.

Notice of Committee: National Institute on Drug Abuse Special Emphasis Panel, Minority Institutions' Drug Abuse Research Development Program Applications, (MIDARP).

Date: April 7, 1999.

Time: 9:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Park Hyatt, 1201 24th Street, N.W., Washington, DC 20037.

Contact Person: Marina L. Volkov, Phd, Special Assistant, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, USC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6964 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 17, 1999.

Time: 1 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Mark Swieter, PhD., Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–6966 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine.

Date: May 13–14, 1999.

Open: May 13, 1999, 9:00 a.m. to 1:00 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: May 13, 1999, 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: May 13, 1999, 2:00 p.m. to 5:00 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: May 14, 1999, 9:00 a.m. to 12:00 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 10894.

Contact Person: Alexa McCray, PhD, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg. 38A, Room 7N–707, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6958 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Center For Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 19, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.

Contact Person: Chhanda L. Ganguly, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

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: March 24–25, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita K. Anand, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

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: March 24, 1999.

Time: 8:30 am to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: John Bishop, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 24, 1999.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

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: March 24, 1999.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 25–26, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, (301) 435–1159.

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: March 25, 1999.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.
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: March 25, 1999.
Time: 1:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Gopal C. Sharma, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.
This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 25, 1999.
Time: 2:30 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Eugene Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.
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: March 25, 1999.
Time: 4:00 pm to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (14).
Date: March 25–27, 1999.
Time: 7:00 pm to 11:00 am.
Agenda: To review and evaluate grant applications.
Place: Ramada Palo Verde, 5251 S. Julian Drive, Palo Verde & 1–10, Tucson, AZ 85706.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–6965 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); The Murine Local Lymph Node Assay: A Test Method for Assessing the Allergic Contact Dermatitis Potential of Chemicals/Compounds, Report Now Available

SUMMARY: The report entitled ''The Murine Local Lymph Node Assay: A Test Method for Assessing the Allergic Contact Dermatitis Potential of Chemicals/Compounds,'' NIH Publication 99–4494, is now available and may be obtained as described in this notice. The report describes the results of an independent peer review evaluation of the validation status of the Local Lymph Node Assay (LLNA) that was conducted on September 17, 1998 (**Federal Register** 63 FR 37405–6, July 10, 1998). The (LLNA) was proposed as an alternative toxicological test method for assessing the allergic contact dermatitis (contact hypersensitivity) potential of chemicals and products. The review was coordinated by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). The review was sponsored by the National Institute of Environmental Health Sciences and the NTP.

Background

Pub. L. 103–43 directed the NEIHS to develop and validate alternative methods that can reduce or eliminate the use of animals in acute or chronic toxicity testing, establish criteria for the validation and regulatory acceptance of alternative testing methods, and recommend a process through which scientifically validated alternative methods can be accepted for regulatory use. Criteria and processes for validation and regulatory acceptance were developed in conjunction with 14 other Federal agencies and programs with broad input from the public. These are described in the document ''Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the Ad Hoc Interagency Coordinating Committee on the Validation of Alternative Methods'' NIH publication 97–3981, March 1997, which is available on the internet at http://ntp-server.niehs.nih.gov.htdocs/ICCVAM/iccvam.html. ICCVAM was subsequently establihsed in a collaborative effort by NIEHS and 13 other Federal regulatory and research agencies and programs. The Committee's functions include the coordination of interagency reviews of toxicological test methods and communication with stakeholders throughout the process of test method development and validation. The following Federal regulatory and research agencies and organizations are participating in this effort:

- Consumer Product Safety Commission
- Department of Defense
- Department of Energy
- Department of Health and Human Services
  - Agency for Toxic Substances and Disease Registry
  - Food and Drug Administration
  - National Institute for Occupational Safety and Health/CDC
  - National Institutes of Health
  - National Cancer Institute
  - National Institute of Environmental Health Sciences
  - National Library of Medicine
- Department of the Interior
- Department of Labor
  - Occupational Safety and Health Administration
- Department of Transportation
  - Research and Special Programs Administration
- Environmental Protection Agency

The LLNA was proposed to ICCVAM for consideration as a stand-alone test to identify chemicals that have a potential to cause allergic contact dermatitis. The ICCVAM determined that there was sufficient information available to merit an independent scientific peer review evaluation of the LLNA test method. Peer review is an essential prerequisite

for consideration of a method for regulatory acceptance. The peer review panel was charged with developing a scientific consensus on the usefulness and limitations of the test method. The peer review panel concluded that the LLNA is a valid alternative to currently accepted guinea pig test methods for the assessment of allergic contact dermatitis when the test method is conducted in accordance with peer review panel recommendations. The panel also concluded that the LLNA offers animal welfare advantages compared to conventional guinea pig methods in that it involves less pain and distress, and fewer animals may be required. The peer review panel's report has been forwarded to Federal agencies for their determination of the regulatory acceptability and applicability of the test method according to their statutory mandates.

Summary of the Report

The report contains 212 pages and includes the results of the independent peer review evaluation and supporting documentation, including the original test method submission, supporting data evaluations conducted by NICEATM, and a proposed protocol that incorporates the recommendations of the peer review panel.

Obtaining the Report

To receive a copy of the report, please contact NICEATM at PO Box 12233, MD EC–17, Research Triangle Park, NC 27709 (mail), 919–541–3398 (phone), 919–541–0947 (fax), or iccvam@niehs.nih.gov (email). The report is also available on the ICCVAM/NICEATM website at *http://iccvam.niehs.nih.gov/llnarep.htm*.

Dated: March 11, 1999.

Samuel H. Wilson,

Deputy Director, National Institutes of Environmental Health Sciences.

[FR Doc. 99–6953 Filed 3–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the teleconference meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in April 1999.

The meeting of the Advisory Committee for Women's Services will be open and will include a discussion of the role and responsibilities of the Advisory Committee in providing advice to SAMHSA, and policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the Fiscal Year 1999 budget and SAMHSA's FY 1999 Knowledge Development and Application Grants.

Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting and a roster of the committee members, may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date: April 30, 1999.

Place: Room 12–94, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: April 30, 1999, 10 a.m. to 12:00 noon.

Contact: Duiona R. Baker, Executive Secretary, Parklawn Building, Room 13–99, Telephone: (301) 443–5184, Fax: (301) 443–8964, E-mail: dbaker@samhsa.gov

Dated: March 17, 1999.

Sandi Stephens,

Team Leader, Division of Extramural Programs Policy and Review. SAMHSA.

[FR Doc. 99–7057 Filed 3–22–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Gila Box Riparian National Conservation Area Advisory Committee; Renewal

AGENCY: Bureau of Land Management, Interior

ACTION: Gila Box Riparian National Conservation Area Advisory Committee—Notice of renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's Gila Box Riparian National Conservation Area Advisory Committee.

The purpose of the Committee is to advise the Bureau of Land Management's Safford Field Manager regarding the preparation and implementation of the comprehensive plan for the long-range management of the Gila Box Riparian National Conservation Area, as required by Section 201 of the Arizona Desert Wilderness Act of 1990, 16 U.S.C. 460ddd.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, N.W., Room 406 LS, Washington, D.C. 20240, telephone (202) 452–0377.

Certification Statement

I hereby certify the renewal of the Gila Box Riparian National Conservation Area Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: March 12, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–7108 Filed 3–22–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–640–1820–00 24 1A]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for each of the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, the interests represented by the individuals appointed to the RAC must be balanced

and representative of the various issues concerned with the management of the public lands. These include three categories:

Category One—Holders of federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups;

Category Three—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

Alaska

Alaska RAC
Theresa McPherson, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–3322

Arizona

Arizona RAC
Deborah Stevens, Arizona State Office, BLM, 222 N. Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215

California

Central California RAC
Larry Mercer, Bakersfield Field Office, BLM, 3801 Pegasus Avenue, Bakersfield, California 93308, (805) 391–6000

Northeastern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Northwestern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Colorado

Front Range RAC; Southwest RAC; Northwest RAC
Sheri Bell, Colorado State Office, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, (303) 239–3671

Idaho

Upper Columbia RAC; Upper Snake RAC; Lower Snake RAC
Don Smurthwaite, Idaho State Office, BLM, 1387 Vinnell Way, Boise, Idaho 83709–2500, (208) 373–4015

Montana and Dakotas

Butte RAC; Dakotas RAC; Lewistown RAC; Miles City RAC
Greg Albright, Montana State Office, BLM, Granite Tower, 222 N. 32nd Street, Billings, Montana 59107–6800, (406) 255–2911

Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC
Jo Simpson, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502–7147, (702) 785–6767

New Mexico

New Mexico RAC
Kathleen Mulkey, New Mexico State Office, BLM, P.O. Box 27115 Sante Fe, New Mexico 87502–0115, (505) 438–7514

Oregon/Washington

Eastern Washington RAC; John Day/Snake RAC; Southeast Oregon RAC
Pam Robbins, Oregon State Office, BLM, 1515 S.W. 5th Avenue Portland, Oregon 97208–2965, (503) 952–6027

Utah

Utah RAC
Sherry Foot, Utah State Office, BLM, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah 84145–0155, (801) 539–4195

DATES: All nominations should be received by the appropriate BLM State Office by May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, MS–LS–406, Washington, D.C. 20240; 202–452–0377.

Dated: March 11, 1999.

Nina Rose Hatfield,

Acting Director, Bureau of Land Management

[FR Doc. 99–7107 Filed 3–22–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

San Pedro Riparian National Conservation Area Advisory Committee; Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: San Pedro Riparian National Conservation Area Advisory Committee—Notice of renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's San Pedro Riparian National Conservation Area Advisory Committee.

The purpose of the Committee is to advise the Bureau of Land Management's Safford Field Manager with respect to the preparation and implementation of the comprehensive plan for the long-range management protection of the San Pedro Riparian National Conservation Area, as required by Section 103 of the Arizona-Idaho Conservation Act of 1988, Public Law 100–696.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, N.W., Room 406 LS, Washington, D.C. 20240, telephone (202) 452–0377.

Certification Statement

I hereby certify that renewal of the San Pedro Riparian National Conservation Area Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: March 12, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–7109 Filed 3–22–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–092–9922–03]

Notice of Intent To Amend the Texas Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Amend to Texas Resource Management Plan (RMP), Invitation for public involvement and notice of public meeting.

SUMMARY: The BLM, Amarillo Field Office, is initiating preparation of a Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for BLM managed Federal lands and minerals in Potter County, Texas. Title 43 Code of Federal Regulations (CFR) 1600, the National Environmental Policy Act (NEPA) of 1969, Council on Environmental Quality (CEQ) regulations and the Federal Land Policy and Management Act (FLPMA) of 1976 will be followed in the preparation of this plan amendment. The public is invited to participate in this land use planning effort. Written comments and suggested issues to address will be accepted through May 17, 1999. An informal public scoping meeting will be held on May 4, 1999 from 6 p.m. to 8:30 p.m. at the BLM Amarillo Field Office, room 447, 801 South Fillmore, Amarillo, Texas.

DATES: Written comments will be accepted through May 17, 1999.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Field Office Manager, Amarillo Field Office, 801 South Fillmore, Suite 500, Amarillo, Texas 79101.

FOR FURTHER INFORMATION CONTACT: For additional information contact Brian Mills, RMPA Team Leader, 221 North Service Road, Moore, Oklahoma 73160, or telephone (405) 794–9624.

SUPPLEMENTARY INFORMATION: The transfer of the Helium Operations Office from the Department of the Interior's now defunct Bureau of Mines to the BLM resulted in the need to amend the existing Texas RMP. The Texas RMP did not address the approximately 11,000 acres of Federal surface estate and 50,000 acres of Federal mineral estate managed by the Amarillo Field Office in Potter County. The anticipated issues to be addressed by this RMPA effort include:

(1) Transfer of all BLM managed Federal surface estate in Potter County, to the jurisdiction of the National Park Service.

(2) A determination of suitability for granting a right-of-way for transmission of electricity across Federal surface estate. These planning issues are presented for public comment and are subject to change as the result of such public comment. The planning team will seek public involvement throughout the planning amendment process. BLM public information and scoping will include notification to the public, Federal, state, tribal and local agencies of the proposed action. A complete record of all phases of the planning process will be available for public review and comment. The final RMPA documents will be available upon request.

Dated: March 16, 1999.

M.J. Chávez,

State Director.

[FR Doc. 99–7023 Filed 3–22–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–99–1150–00]

St. George Field Office Approved Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976, the Department of the Interior, Bureau of Land Management (BLM), St. George Field Office provides notice of the availability of the approved Resource Management Plan (RMP) and Record of Decision (ROD) for the St. George Field Office. The approved RMP/ROD was signed by the Utah State Director on March 15, 1999. This approved RMP/ROD supersedes the existing Virgin River Management Framework Plan and other related documents for managing BLM-administered lands, with exception to some off-highway vehicle, mountain bike, and other restrictions/closures carried forth from past **Federal Register** notices. The St. George Field Office is responsible for management of BLM-administered lands and minerals in all of Washington County, Utah. This county encompasses the southwestern corner of Utah. The St. George Field Office is administratively responsible for 671,545 acres of surface and subsurface lands.

ADDRESSES: Copies of the approved RMP/ROD will be available upon request at the end of April when they are delivered by the printing contractor to the St. George Field Office. You may contact Lauren Mermejo at the St. George Field Office if you would like a copy of this document at: 345 East Riverside Drive, St. George, Utah, 84790. The telephone number is (435) 688–3216.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, St. George Field Office Manager, at the above address. He can be reached by telephone at (435) 688–3201.

SUPPLEMENTARY INFORMATION: The St. George Field Office approved RMP/ROD is essentially the same as the Dixie Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) that was completed in September, 1995. (The name of the field office was changed from the Dixie Resource Area to the St. George Field Office in early 1999; however, the administrative boundaries remain the same.) The **Federal Register** notice for the PRMP/DEIS was dated September 17, 1998, Volume 63, Number 180, Pages 49711–49712. No changes to the proposed decisions have been made. However, some clarifying language has been included as a result of the protest letters received on the PRMP/FEIS, as well as internal corrections. Two new decisions that were added to the approved RMP/ROD include (1) a decision to conduct activities within desert tortoise habitat in accordance with the terms and conditions described in the U. S. Fish and Wildlife Service Biological Opinion for the Mojave desert tortoise (ES/6–UT–98–F–005, August 12, 1998), and (2) a decision to continue to allow for low-impact motorcycle trials events in the Pahcoon Gulch area, with specific constraints. The Director's office has issued final decisions, dismissing or resolving, each of the nineteen protests received, thus allowing for immediate implementation of the approved RMP.

Wild and Scenic Rivers

Through this planning effort parts or all of the following five river segments are recommended as suitable for congressional designation: Deep Creek/Crystal Creek, North Fork of the Virgin River above Zion National Park, Oak Creek/Kolob Creek, that portion of LaVerkin Creek/Smith Creek from above Zion National Park to the north boundary of the private parcel of Section 18, T. 40 S., R. 12 W., and that portion of the Virgin River contained

wholly within the Beaver Dam Mountains Wilderness Area.

Areas of Critical Environmental Concern (ACEC)

The plan designates the following ten areas as ACECs: Red Bluff (6,168 acres), Warner Ridge/Fort Pearce (4,281 acres), Santa Clara/Gunlock (1,998 acres), Santa Clara/Land Hill (1,645 acres), Lower Virgin River (1,822 acres), Little Creek Mountain (19,302 acres), Canaan Mountain (31,355 acres), Red Mountain (4,854 acres), Beaver Dam Slope (48,519 acres), Upper Beaver Dam Wash (33,063 acres).

Off-Highway Vehicle Designations

The plan designates 91,704 acres closed to off-highway vehicle (OHV) use; 448,066 acres as open for use by OHVs on existing or designated roads and trails; and 89,235 acres as open for use by OHVs.

Linda Colville,

Acting State Director, Utah.

[FR Doc. 99–7024 Filed 3–22–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00 ES–50259, Group 33, Illinois]

Notice of Filing of Plat of Survey; Illinois

The plat, in five sheets, of the dependent resurvey of portions of the north boundary, portions of the subdivisional lines and the survey of the Lock and Dam Nos. 25 and 26 acquisition boundaries, in Township 11 South, Range 2 West and the dependent resurvey of the north and east boundaries and a portion of the subdivisional lines, in Township 11 South, Range 3 West, both of the 4th Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 21, 1999.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 21, 1999.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 12, 1999.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 99–6967 Filed 3–22–99; 8:45 am]

BILLING CODE 4310–GJ–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 2, 1999 at 1:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–387–392 and 731–TA–815–822 (Preliminary) (Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia)—briefing and vote.
5. Outstanding action jackets:

(1) Document No. INV–99–045: Approval of institution of five-year reviews on Potassium Chloride, Certain Bearings, Internal Combustion Industrial Forklift Trucks, and Nitrile Rubber.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 18, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–7163 Filed 3–19–99; 12:20 pm]

BILLING CODE 7020–02–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

March 17, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 am., Thursday, March 25, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: The Commission postponed until 10:00 a.m., Thursday, April 29, 1999, oral argument on *Secretary of Labor* v. *Cyprus Cumberland Resources, Inc,* Docket No. PENN 98–15–R.

PREVIOUSLY ANNOUNCED TIME AND DATE: The meeting to consider *Secretary of Labor* v. *Cyprus Cumberland Resources, Inc.,* Docket No. PENN 98–15–R, will commence following upon the conclusion of oral argument in the case which commences at 10:00 a.m. on Thursday, March 25, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

CHANGES IN THE MEETING: The meeting to consider *Secretary of Labor* v. *Cyprus Cumberland Resources, Inc.,* Docket No. PENN 98–15–R, will commence following upon the conclusion of oral argument in the case commences at 10:00 a.m. Thursday, April 29, 1999.

TIME AND DATE: 10:00 a.m. Thursday, April 8, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Zecco* v. *Consolidation Coal Co.,* Docket No. WEVA 97–82–D (Issues include whether the judge erred by not considering whether Zecco's shutdowns of his continuous miner in the presence of 1% or more methane, and his additional safety measures, were protected activity, and whether the judge erred when he determined that Consol had a legitimate business reason for transferring Zecco.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 39 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–7225 Filed 3–19–99; 3:50 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date & Time: April 8th & 9th, 1999; 8:30 AM–5:00 PM.

Place: Room 365, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Anne C. Richeson, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Connections to the Internet Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 17, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–7002 Filed 3–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological and Geographic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting of the Advisory Panel for Anthropological and Geographic Sciences Cluster (#1757):

Date & Time: March 28–29, 1999; 8:30 a.m.–5:00 p.m.

Place: Sheraton Chicago Hotel and Towers, 301 East North Water Street, Chicago, IL 60611.

Contract Person: Dr. John Yellen, Program Director for Archaeology, Archaeomtry & Systematic Collections, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: to review and evaluate Archaeometry proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

Reason for Closing: The proposals being review include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Delay due to coordinating activity.

Dated: March 17, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–7004 Filed 3–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer & Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer—Communications Research (1192).

Date: March 26, 1999.

Time: 8:00 a.m.–5:00 p.m.

Place: Room 1150 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Robert B. Grafton, Program Director, Design Automation, CISE/C–CR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b©, (4) and (6) of the Government in the Sunshine Act.

Dated: March 17, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–7003 Filed 3–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date/Time: March 30–31, 1999, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 380, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Joy Pauschke, Program Director, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Centers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 17, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–7006 Filed 3–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: March 29–30, 1999 from 8:30 a.m. to 5:00 p.m.

Place: Room 390, NSF 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. C. Denise Caldwell, Program Officer for Atomic, Molecular and Optical Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 11130. Telephone: (703) 306–1807.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to MPS Directorate in response to solicitation NSF 98–160.

Agenda: To review and evaluate POWRE proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and propriety data for present and future subcontracts. These matters are exempt from 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 17, 1999.

Linda Allen-Benton,

Acting Division Director, Human Resource Management.

[FR Doc. 99–7005 Filed 3–22–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, STN 50–457]

Commonwealth Edison Company; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 106 to Facility Operating License No. NPF–37, Amendment No. 106 to Facility Operating License No. NPF–66, Amendment No. 98 to Facility Operating License No. NPF–72, and Amendment No. 98 to Facility Operating License No. NPF–77, issued to Commonwealth Edison Company (the licensee), which revised the operating licenses and the Technical Specifications for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois. The amendments are effective as of the date of issuance.

The amendments revise the Byron and Braidwood Technical Specifications (Appendix A of the operating licensees) in their entirety to be consistent with the Improved Standard Technical Specifications conveyed by NUREG–1431 (April 1995). In addition, the amendments add two new license conditions to Appendix C of the Byron and Braidwood operating licenses regarding surveillance requirements and delete one existing license condition.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on October 28, 1998 (63 FR 57710), October 29, 1998 (63 FR 58072), and November 2, 1998 (63 FR 58794). No request for a hearing or petition for leave to intervene was filed following these notices.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (63 FR 70440).

For further details with respect to the action see (1) the application for amendment dated December 13, 1996, as supplemented by letters dated February 24, September 2, October 10, October 28 and December 8, 1997, and January 27, January 29, February 6, February 13, February 24, February 26, April 14, April 16, June 1, June 2, July 2, July 8, July 30, July 31, August 11, August 12, September 21, September 25, October 1, October 2, October 5, October 15, October 23, November, 6, November 19, November 23, November 30 and December 14, 1998, (2) Amendment No. 106 to Facility Operating License No. NPF–37, Amendment No. 106 to Facility Operating License No. NPF–66, Amendment No. 98 to Facility Operating License No. NPF–72, and Amendment No. 98 to Facility Operating License No. NPF–77, (3) the Commission's related Safety Evaluation, and (4) the Commission's related Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at: for Byron, The Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 22nd day of December, 1998.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7027 Filed 3–22–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 2); Exemption

I

Northeast Nuclear Energy Company, et al., is the holder of Facility Operating License No. DPR–65 which authorizes operation of Millstone Nuclear Power Station, Unit 2. Millstone Nuclear Power Station, Unit 2, is a pressurized water reactor located in Waterford, Connecticut. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' to Title 10 of the Code of Federal Regulations (10 CFR) Part 50, establishes fire protection features required to satisfy General Design Criterion 3, ''Fire protection,'' of Appendix A to 10 CFR Part 50, with respect to certain generic issues for nuclear power plants licensed to operate prior to January 1, 1979. By letter dated July 31, 1998, as supplemented by letters dated September 24 and November 13, 1998, Northeast Nuclear Energy Company (NNECO), the licensee for Millstone Nuclear Power Station, Unit 2, requested four exemptions from certain requirements of 10 CFR Part 50 Appendix R. Specifically, for the Intake Structure (Appendix R Fire Area R–16) and the East 480 Volt Switchgear Room (Appendix R Fire Area R–11) the licensee requested exemptions from the requirements of 10 CFR Part 50, Appendix R, Section III.G.3 to the extent it requires the licensee to have automatic fire suppression systems in these areas. For the Charging Pump Room (Appendix R Area R–4) the licensee requested an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.2 to the extent that it requires the licensee to meet the specific requirements of either Section III.G.2.a, b, or c. Finally, the licensee requested an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.J to the extent that it requires emergency lighting units with at least an 8-hour battery power supply to light all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

III

Intake Structure

Background

As a result of a design basis review at Millstone, Unit 2, the licensee determined that the Intake Structure does not fully meet the requirements of 10 CFR Part 50, Appendix R. The Intake Structure is an alternate shutdown area. Therefore, it is required to meet Appendix R, Section III.G.3. Section III.G.3 requires that a fixed fire suppression system be installed in an alternate shutdown area. The licensee requested an exemption from this requirement.

Description

The Millstone Unit 2 Intake Structure is an alternate shutdown area because a fire in the Intake Structure could render all three of the service water pumps inoperable and the loss of all three service water pumps renders the emergency diesel generators inoperable. Alternative shutdown capability is provided by the backfeed of AC power from Millstone, Unit 1 for provision of power to Millstone, Unit 2.[1] This strategy eliminates the need to provide a service water pump to cool a Millstone, Unit 2 emergency diesel generator in the event of a fire in the Intake Structure.

The Intake Structure is a reinforced concrete structure and constitutes Fire Area R–16 in the Appendix R analysis. The structure consists of three fire hazard analysis (FHA) fire zones; I–1A, I–1B, and I–1C. The structure is constructed of concrete floors, ceiling and walls. Reinforced concrete walls separate the three fire zones within the Intake Structure. These walls are a minimum of 12″ thick. The ceiling height within the zones is approximately 24′.

Three service water pumps (P–5A, 5B and 5C), three service water strainers (L–1A, L–1B and L–1C), two service water isolation valves (2–SW–97A and 2–SW–97B), and associated cables used to support Appendix R safe shutdown are located in the pump room (fire zone I–1A). The pumps are approximately 19″ on center from each other. There is no Appendix R related equipment located in the sodium hypochlorite room (fire zone I–1B) or the motor control center (MCC) room (fire zone I–1C). The service water pumps supply service water through the tube side of the turbine building component cooling water (TBCCW), reactor building component cooling water (RBCCW), and emergency diesel generator heat exchangers. Following a fire, the only short-term need for service water is diesel generator cooling. In the long term, service water is used as part of the shutdown cooling process to transfer heat from the RBCCW system to the ultimate heat sink.

A fixed fire suppression system is not provided in the Intake Structure. Detection is provided by ionization smoke detectors located in all three zones of the Intake Structure. The MCC room and the sodium hypochlorite room are each provided with one detector. The pump room is provided with eight detectors in the east portion of the structure. Three of these detectors are located directly above each of the service water pumps to provide hazard-specific coverage for the pumps. The automatic detection system alarms in the control room.

Fire hose houses are located south of the Intake Structure between the Millstone Unit 1 and Millstone Unit 2 Intake Structures. Fire extinguishers are provided in the Intake Structure. Outdoor hydrants are located adjacent to the Intake Structure.

IV

East 480 Volt Switchgear Room

Background

As a result of a design basis review at Millstone, Unit 2, the licensee determined that the East 480 Volt Switchgear Room does not fully meet the requirements of 10 CFR Part 50, Appendix R. Specifically, the East 480 Volt Switchgear Room is an alternate shutdown area. Therefore, it is required to meet Appendix R, Section III.G.3. Section III.G.3 requires that a fixed fire suppression system be installed in an alternate shutdown area. The licensee requested an exemption from this requirement.

Description

The East 480 Volt Switchgear Room is an alternate shutdown area because a fire in this area has the potential to affect the availability of electrical AC power from both emergency diesel generators. Facility Z2 power may be unavailable because 480 Volt Bus 22F and the ''B'' emergency diesel generator room ventilation fan (F38B) power supply (MCC B62) are located in the fire area. The ''A'' emergency diesel generator may be unavailable because of fire damage to the power cable which supplies Facility Z1 Bus 24C. Coordination problems could also cause loss of the Z2 4160 volt switchgear. Thus, in the event of loss of offsite power, normal emergency AC power would not be available to shut down the plant. As discussed in an NRC letter of July 17, 1990, post-fire alternate shutdown capability for a fire in the East 480 Volt Switchgear Room is acceptable based, in part, on the ability to provide AC power from Millstone, Unit 1 via a backfeed from Unit 1 to Unit 2.

The East 480 Volt Switchgear Room is located on the 36′-6″ elevation of the auxiliary building and consists of one Appendix R Fire Area (R–11). The boundaries of this area consist of a concrete floor, ceiling and walls. Barriers providing separation between this fire area and the adjacent fire areas are constructed of reinforced concrete 12″ to 18″ thick, or concrete blocks 8″ to 12″ thick. These walls contain rated fire doors and dampers, and a door that has been evaluated as adequate for the hazards.

Cables associated with Appendix R cold shutdown equipment are also located in the area. Specifically cables associated with both trains of low pressure safety injection (LPSI A and B), and reactor building component cooling water (RBCCW A and B) are located in this area. However, the licensee has planned to repair the cables, to achieve cold shutdown, in the event of a fire.

A fixed fire suppression system has not been provided in the East 480 Volt Switchgear Room. Detection is provided by an ionization smoke detection system which alarms in the Control Room. Fire extinguishers are provided in this area and in adjacent areas. A hose station is located in the adjacent turbine building and is available for use in this area.

V

Charging Pump Area

Background

As a result of a design basis review at Millstone Unit 2, the licensee has determined that the Charging Pump Area does not fully meet the requirements of 10 CFR Part 50, Appendix R. Specifically, the Charging Pump Area does not fully meet any of the three options of Section III.G.2, which requires separation of cables and equipment and associated non-safety circuits of redundant trains by one of the following means: (1) enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 3-hour fire rating; (2) a horizontal distance of more

[1] In its September 24, 1998, letter responding to a request for additional information, the licensee stated that the decommissioning of Millstone, Unit 1 will not affect compliance with Appendix R for Millstone, Unit 2. As decommissioning progresses, both Millstone, Unit 1 and Millstone, Unit 2, must maintain the present licensing and design basis requirements unless or until revised by appropriate means.

than 20 feet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the area; or (3) enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic suppression system shall be installed in the fire area. The licensee has requested an exemption from this requirement.

As a result of its design basis review, the licensee has determined that the 3-hour rated fire wraps on the charging pump cables must be removed. Instead of relying on the protection of the fire wrap, the licensee stated that it would reroute the cables associated with the ''B'' and ''C'' charging pumps (Facility Z2 train) outside Fire Area R–4. These changes are necessary to resolve ampacity and fire rating issues with the previous fire wrap on the charging pump cables in Fire Area R–4. The licensee stated that the rerouting of the Facility Z2 cables from the ''B'' and ''C'' pump cubicles to outside the fire area is a more effective approach than relying on cables protected with fire wrap within the area of concern.

Description

The Charging Pump Room is located on the (−)25′-6″ elevation of the Auxiliary Building. All three of the Millstone, Unit 2 charging pumps (P18A, P18B, and P18C) are located in the same Appendix R Fire Area (R–4). The area is separated into two fire zones, A–6A and A–6B. Fire zone A–6A contains the Charging Pump Cubicles and fire zone A–6B contains the Degasifier Area. Fire area R–4 is mainly separated from adjacent fire zones and areas by reinforced concrete construction. The entrance to Fire Area R–4 is separated from Fire Area R–1 by a fixed water curtain.

The charging pumps are spaced approximately 18′ from each other and are separated by 10.5′ high reinforced concrete missile shield walls approximately 17′ on center and approximately 2′ thick. A common walkway traverses the entrances to all three pump cubicles. Six lightly loaded cable trays represent the only intervening combustibles. Three raceways traverse the back of the ''A'' and ''B'' cubicles and cross the ''C'' cubicle. Three other raceways are in the walkway in front of the charging pump cubicles. Each charging pump contains approximately 10 gallons of lube oil. A curbed dike area has been provided for each pump. The capacity of each dike area is sufficient to contain the volume of one 55 gallon oil drum. This is adequate to accommodate the approximately 10 gallons of lube oil contained within each respective charging pump plus any transient oil brought in for pump oil changes. The ceiling height in the Charging Pump Room is approximately 18′-0″.

The entrance to the Charging Pump Room is through adjacent zone A–6B, the Degasifier Area. The entrance to the Degasifier Area is via fire zone A–1B, the RBCCW Pump and Heat Exchanger Area. This entrance is protected with a locked gate. A water curtain has been provided at the entrance to zone A–6B.

Charging Pump Power Cables

Charging pump ''A'' is powered from Facility Z1. The power cable for pump ''A'' is routed in conduit Z1A202 to a junction box inside the ''A'' cubicle into conduit Z1A636 and out of the cubicle into a common walkway which traverses the entrance to the ''B'' and ''C'' cubicles. The cable exits the fire area via a raceway immediately near the entrance to the walkway (which is also the access point into the fire area).

Charging pump ''B'' is the swing pump and can be powered from either Facility Z1 or Z2. The transfer switch for pump ''B'' power is located adjacent to the pump, mounted on the partial height wall which separates the ''B'' and ''C'' cubicles. The Facility Z1 power cable for pump ''B'' is routed in conduit Z1A210 from a transfer switch adjacent to the pump and out of the ''B'' cubicle into a raceway in the walkway. The raceway traverses the entrance to the ''C'' cubicle. The cable exits the fire area via a raceway immediately near the entrance to the walkway (which is also the access point into the fire area). The Facility Z2 power cable for pump ''B'' will be rerouted from another transfer switch near the pump, downward in new conduit Z2A1261, out of the ''B'' cubicle and into the adjacent fire area below (Fire Area R–5). This cable will not re-enter Fire Area R–4.

Charging pump ''C'' is powered from Facility Z2. The power cable for pump ''C'' will be re-routed from the pump downward in a new conduit, Z2A1262, out of the ''C'' cubicle and into Fire Area R–5, below. This cable will not re-enter Fire Area R–4.

Fire Area R–5 does not contain any Facility Z1 power cables associated with charging pump ''A'' or ''B'.

Charging Pump Control Cables

Charging pumps ''A'' and ''C'' have no safe-shutdown-related control cables located in Fire Area R–4.

Charging pump ''B'' has several control cables which are located in the Fire Area R–4. One of these control cables (a Facility Z1 cable) is routed from a transfer switch in the ''B'' cubicle in conduit Z5A205 to a junction box and into conduit Z5A203, out of the ''B'' cubicle, and into a raceway in the walkway. The raceway traverses the entrance to the ''C'' cubicle and exits the fire area at the entrance to the walkway (which is also the access point into the fire area). The Facility Z2 control cable will be re-routed with the ''B'' pump power cable from a transfer switch near the pump downward in conduit Z2A1261, out of the ''B'' cubicle and into Fire Area R–5, below. All of the control cables can be isolated from P18B control circuits by operating the pump from the Fire Shutdown Panel, C10 (located in the Facility Z2 4.6kV Switchgear Room).

Fire Area R–5 does not contain any Facility Z1 control cables associated with charging pump ''A'' or ''B'.

VI

Yard Area

Background

As a result of a revised Appendix R compliance strategy for achieving safe shutdown, two additional areas have been identified by the licensee in which operation of safe shutdown equipment will be required. In the event of certain fires, operators will have to operate equipment in the Intake Structure and the Refueling Water Storage Tank (RWST) pipe enclosure. Access to these areas requires travel through portions of the yard area at Millstone, Unit 2. As these areas are not addressed in the existing exemption, the licensee determined that an exemption from Section III.J of Appendix R is required.

Description

The outdoor access and egress route to 4160V Bus 14H (formerly Electrical Bus 24F), extends from the east entrance of Millstone, Unit 1, Building 118 (grade elevation), east to the access roadway, south on the roadway (at the fire water tanks), and then turning west to Bus 14H.

The access route to the Intake Structure extends west from Bus 14H, then north up to the northeast corner doorway of the Millstone, Unit 2 Intake Structure.

The outdoor access/egress route to the RWST Pipe Chase also extends from the east entrance of Millstone, Unit No. 1, Building 118 (grade elevation) and east to the access roadway (at the fire water tanks). The route then continues north, west, and south along the cyclone fence, through the fenced gate between the Primary Water Storage Tank (PWST) and RWST. Inside the fenced area, the

route continues to the southern portion of the pipe chase building to the stairway platform entrance.

The licensee proposes to credit the security lighting system for access and egress route emergency lighting in lieu of an 8-hour battery supply in the yard area. The basis for this is as follows:

1. The security lighting system illuminates the required access and egress routes;

2. The security lighting power supply is backed by a security diesel generator with fuel storage capacity to ensure operation at greater than or equal to 8 hours;

3. The security generator, components, and circuits are independent from the postulated fire areas which require access to the 4160V Bus 14H enclosure, Intake Structure, or RWST Pipe Chase.

Additionally, there are portable lighting units dedicated for operations department use. The equipment is administratively controlled and located inside the Millstone, Unit 2 Control Room.

VII

Evaluation

Intake Structure (Fire Area R–16)

A postulated fire in the service water pump room is a cable or lube oil fire resulting from a transient ignition source, an electrical fault, or the overheating of a pump bearing. The majority of the combustible load in the area is cable insulation and lube oil. Plastic reinforced fiberglass traveling screen covers, wooden walkways, plastics, and rubber contribute relatively minor amounts to the combustible loading. The majority of the cable insulation is found in cable trays that are dispersed throughout the east portion of the structure. The cables meet the requirements for IEEE–383 qualified cables. The majority of the lube oil is contained within four non-safety-related circulating water pumps. The remaining lube oil is in other mechanical equipment in relatively small amounts dispersed throughout the pump room.

The traveling screen covers are mounted to four traveling screens. The wooden walkways cover approximately 900 ft^2 in the area of the traveling screens and consists of treated plywood on structural support members. These combustibles are dispersed over the west portion of the structure while the service water pumps and strainers are located on the east side. The use of transient combustible materials in the plant is limited and controlled procedurally. Intervening combustibles in the form of cable insulation are located between the individual service water pumps and in the surrounding area. A fire in this area is expected to be restricted to the immediate area of the cables and/or equipment involved. A fire detected by the automatic detection system would result in annunciation in the Control Room which would lead to a fire brigade response and subsequent extinguishment utilizing manual fire fighting equipment.

A significant fire in the sodium hypochlorite room is not anticipated due to minimal combustible loading and limited ignition sources. The majority of this combustible loading is in the form of cable insulation. The cables meet the requirements for IEEE–383 qualified cables.

If a fire were to occur in the sodium hypochlorite room, it is expected to be contained within the zone and not affect the service water pumps or related cables in zone I–1A due to the physical barrier separation between the zones and lack of intervening combustibles. Loss of the equipment in the zone (i.e., two sodium hypochlorite solution tanks) would not affect the ability of the plant to achieve safe shutdown and does not require the plant to invoke alternate shutdown methods. Smoke detection is present in the zone and will provide warning in the Control Room of a fire in its early stages. Rapid fire brigade response and subsequent extinguishment using manual fire fighting equipment is anticipated. Although sodium hypochlorite solution is considered non-flammable and non-combustible, the fumes that may be produced when it is heated are similar to chlorine gas. The licensee stated that its fighting strategies address concerns associated with fighting a fire involving the sodium hypochlorite tanks.

A significant fire in the MCC room is not anticipated due to the limited amounts of combustible materials present. The majority of this combustible load is cable insulation in trays. The cables meet the requirements for IEEE–383 qualified cables. The majority of the remaining portion of the combustible load is contained in an approved flammable liquids storage cabinet. A fire occurring in this zone is not expected to spread beyond the general area of origin and should not affect the service water pumps or related cables in zone I–1A due to the physical fire separation between the zones and a limited amount of intervening combustibles. A normally open flood control door and unprotected cable tray penetration openings exist in the west wall to zone I–1A. The cable trays through the penetration openings contain combustibles, in the form of cable insulation, that may contribute to fire spread between the zones. Combustible loading is located in the area of the door opening. Due to the limited quantity of combustible material and the configuration of the combustible loading, fire is expected to be restricted to the general area of the cables and/or equipment involved. The loss of the equipment in this zone (i.e., non-safety-related MCCs B–13 and B–42) would not affect the ability of the plant to achieve safe shutdown and does not require the plant to invoke alternate shutdown methods. There is reasonable assurance that a fire would be detected by the automatic detection system in its incipient stages prior to significant flame propagation through the openings or room temperature increase that may affect the service water pumps or related cables in the adjacent pump room. Annunciation in the Control Room will lead to fire brigade response and subsequent extinguishment using manual fire fighting equipment.

As approved in the NRC letter dated July 17, 1990, safe shutdown of the plant can be achieved in the event that a fire goes undetected and renders all three service water pumps inoperable. Such a fire would cause loss of diesel generator cooling, and therefore, the diesel generators would not be available during a loss of offsite power. In that situation, power will be provided via a backfeed from Millstone, Unit 1.

The underlying purpose of the requirement to install a fixed fire suppression system in the area, as required by Section III.G.3 of Appendix R, is to limit fire damage to the dedicated or alternate shutdown capability.

Based on the amount of combustible loading and combustible loading configuration, the licensee's administrative procedures that limit and control transient combustibles, the existing fire detection system, and the expected fire brigade response and subsequent fire extinguishment, the possibility of a fire developing to involve all three of the service water pumps is not considered likely. However, if this were to occur, the loss of all three of the service water pumps would not adversely impact the safe shutdown capability of the plant, based on the ability to provide power via a backfeed from Millstone Unit 1, and the ability of the plant to make necessary repairs to a service water pump, strainer, and power cable to achieve cold shutdown. The licensee stated that the Appendix R safe shutdown strategy for a fire in the Intake Structure accounts for the loss of all three service

water pumps. In addition, the configuration for alternate shutdown in the Intake Structure had been previously found acceptable in the NRC SE dated July 17, 1990. The configuration has not changed since this approval.

On the basis of its evaluation, the staff concluded that a fixed fire suppression system is not needed to satisfy the underlying purpose of the rule.

East 480 Volt Switchgear Room (Fire Area R–11)

The majority of the combustible load in this area consists of cable insulation in cable trays and other electrical equipment. A postulated fire in the area would involve the cable insulation or electrical equipment. The use of transient combustible materials in the plant is limited and controlled procedurally. Potential ignition sources include cables, shorts, malfunctioning electrical equipment, and transient sources. If a fire should occur, there is reasonable assurance that it will be detected by the automatic detection system in its incipient stages prior to significant flame propagation or room temperature increase. This will result in annunciation in the Control Room, timely fire brigade response, and manual fire extinguishment utilizing available fire fighting equipment. In addition, access to the switchgear room from the continuously manned Control Room has been provided via a double door at the east end of the room. This direct route to the area will ensure rapid response by the Control Room operators to an alarm in this area.

Due to the types of combustibles and the type of electrical fires expected in this area, as well as the fact that plant operators are situated in the Control Room directly adjacent to this room, and the presence of a dedicated site fire brigade, the licensee considers manual suppression to be the preferable method of protection in this area.

In the event that there is a loss of electrical power from both emergency diesel generators, the plant is able to safely achieve shutdown by utilizing the backfeed from Millstone, Unit 1 to power the Z1 electrical facility.

The underlying purpose of the requirement to install a fixed fire suppression system in the area, as required by Section III.G.3 of Appendix R, is to limit fire damage to the dedicated or alternate shutdown capability.

Based on the amount of combustible loading and combustible loading configuration, the licensee's administrative procedures that limit and control transient combustibles, the existing fire detection system, the expected fire brigade response and subsequent fire extinguishment, and the close proximity to the Control Room, there is reasonable assurance that a fire would not involve the entire area or spread beyond the area. The loss of the equipment in the east 480V switchgear room does not adversely impact the safe shutdown capability of the plant based on the ability to provide power via a backfeed from Millstone Unit 1.

Based on the above, the staff concluded that a fixed fire suppression system is not necessary to satisfy the underlying purpose of the rule.

Charging Pump Room (Fire Area R–4)

The primary combustibles in the charging pump and degasifier rooms are cable insulation and lube oil. Potential ignition sources include hot surfaces, potential cable shorts, motors, and mechanical failure. Both fire zones are provided with an ionization smoke detection system. Activation of the detection system in either zone will initiate an alarm in the Control Room.

Each charging pump contains approximately 10 gallons of lube oil. Spill containment curbing (capable of containing a 55-gallon spill) has been provided to separate each charging pump cubicle to protect each pump from a combustible liquid spill involving a redundant charging pump. The 55-gallon containment volume is adequate to accommodate the lube oil contained within each respective charging pump plus any transient oil brought in for pump oil changes. The separation provided by the reinforced concrete missile shield partial height walls prevents a direct line-of-sight between adjacent pumps. There are no openings in these walls.

Intervening combustibles between the pump areas consists of six lightly-loaded cable trays (less than 20 cables in each tray). Three raceways traverse the back of the ''A'' and ''B'' cubicles, and cross the ''C'' cubicle. Three other raceways are in the walkway in front of the charging pump cubicles. The cable insulation satisfies IEEE–383 qualification criteria.

A fire extinguisher is provided in the Charging Pump Area. In addition, fire extinguishers and a fire hose station are located in the adjacent zone A–1B. Transient combustible materials in the plant are controlled procedurally and there is a locked access gate at the walkway entrance. The licensee stated that firefighting strategies have been prepared and are available to assist the fire brigade in combating any expected fire.

Due to the functions required of the charging pumps in safe shutdown of the plant, the defense-in-depth concept for fire protection in this area is essential. This area is provided with detection and manual suppression in the form of a fire extinguisher. The area has low combustible loading. When the licensee completes the cable separation modifications, along with the partial barriers already in place, there is reasonable assurance that a single postulated fire would not damage redundant trains of safe shutdown equipment.

The Charging Pump Room is required to meet 10 CFR Part 50, Appendix R, Section III.G.2. Section III.G.2 requires separation of cables and equipment and associated non-safety circuits of redundant trains by any one of three optional means. The underlying purpose of the three applicable options under Section III.G.2, is to provide reasonable assurance that at least one train of equipment relied on to achieve and maintain safe shutdown is free of fire damage.

Based on the configuration of the charging pump room, the combustibles loading, the cable separation modifications, the in-place fire detection systems, the fire brigade and availability of manual fire suppression equipment, and preplanned fire fighting strategies there is reasonable assurance that a fire would not cause the loss of all charging pumps.

Based on the above, the staff concluded that requiring the licensee to meet one of the three applicable options listed in 10 CFR Part 50, Appendix R, Section III.G.2, is not necessary to satisfy the underlying purpose of the rule.

Yard Area

The underlying purpose of Section III.J of Appendix R is to ensure that fixed lighting of sufficient duration and reliability is provided to allow operation of equipment required for post-fire, safe shutdown of the reactor. Lighting for access/egress associated with the equipment is also required. The licensee is requesting an exemption from the access/egress portion of the Section III.J requirement relating to the yard area.

Large area applications will typically impose electrical load requirements which are beyond the normal limits of battery units. The licensee stated that the security lighting system illuminates the required access and egress routes. The power supply is backed by a security diesel generator with fuel storage capacity to ensure operation greater than or equal to 8 hours. The security generator, components, and

circuits are independent from the fire areas which require access to the 4160V Bus 14H enclosure, Intake Structure, or RWST Pipe Chase. Consistent with the defense in depth approach to fire protection, portable lighting equipment is also available and can be relied upon for use in the event of a fire.

Based on the availability and reliability of the security lighting of sufficient duration and the availability of portable lighting, there is reasonable assurance that the access/egress routes through the yard area that are relied on for safe shutdown of the facility can be accessed in the event of a fire.

On the basis of its evaluation, the staff concluded that the application of the regulation in this circumstance is not necessary to satisfy the underlying purpose of the rule.

VIII

Conclusions

Intake Structure

On the basis of its evaluation, the staff finds that special circumstances are present in that the application of the regulation in this circumstance is not necessary to achieve the underlying purpose of the rule. The licensee's request for an exemption from the requirements of Section III.G.3 of Appendix R, to the extent that it requires the installation of a fixed fire suppression system, is granted pursuant to 10 CFR 50.12(a)(2)(ii) for fire area R–16, the Intake Structure, provided the factors the licensee used to justify its exemption request are maintained. The staff concludes that the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

East 480 Volt Switchgear Room

On the basis of its evaluation, the staff finds that special circumstances are present in that the application of the regulation in this circumstance is not necessary to achieve the underlying purpose of the rule. The licensee's request for an exemption from the requirements of Section III.G.3 of Appendix R, to the extent that it requires the installation of a fixed fire suppression system, is granted pursuant to 10 CFR 50.12(a)(2)(ii) for fire area R–11, the East 480 Volt Switchgear Room, provided the factors the licensee used to justify its exemption request are maintained. The staff concludes that the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Charging Pump Room

On the basis of its evaluation, the staff finds that special circumstances are present in that the application of the regulation in this circumstance is not necessary to achieve the underlying purpose of the rule. The licensee's request for an exemption from the requirements of Section III.G.2 of Appendix R, to the extent that it requires the licensee to meet one of the three applicable options (Section III.G.2.a, b, or c), is granted pursuant to 10 CFR 50.12(a)(2)(ii) for fire area R–4, the charging pump room, provided the factors the licensee used to justify its exemption request, including rerouting the charging pump cables, are maintained. The staff concludes that the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Yard Area

On the basis of its evaluation, the staff finds that special circumstances are present in that the application of the regulation in this circumstance is not necessary to achieve the underlying purpose of the rule. The licensee's request for an exemption from the requirements of Section III.J of Appendix R, to the extent that it requires emergency lighting with an 8-hour battery supply for access and egress routes to safe shutdown equipment, is granted pursuant to 10 CFR 50.12(a)(2)(ii) for the yard area, provided the factors the licensee used to justify its exemption request are maintained. The staff concludes that the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Dated at Rockville, Maryland, this 16th day of March 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7029 Filed 3–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company, Inc., et al.; (Vogtle Electric Generating Plant, Units 1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81, issued to Southern Nuclear Operating Company, Inc., et al. (the licensee), for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the Facility Operating Licenses (FOLs) for the Vogtle Electric Generating Plant (Vogtle), Units 1 and 2, to delete or modify certain license conditions, which have become obsolete or inappropriate. In addition, the Technical Specifications would be reconstituted to reflect revised word processing software. No change in technical requirements would be involved; however, the font would be changed to Arial 11 point; page numbers would be revised to a limiting condition for operation specific numbering scheme; and intentional blank pages would be deleted.

The proposed action is in accordance with the licensee's application for amendments dated October 15, 1998, as supplemented by letter dated November 11, 1998.

The Need for the Proposed Action

When the FOLs, NPF–68 and NPF–81, were issued to the licensee, the NRC staff deemed certain issues essential to safety and/or essential to meeting certain regulatory interests. Other issues were associated with adoption of the Improved Standard Technical Specifications in License Amendment Nos. 96 and 74, for Vogtle Units 1 and 2, on September 25, 1996. These issues were imposed as license conditions in the FOLs, with deadlines for their implementation. Since the units were licensed to operate in the 1980s, most of these license conditions have been fulfilled. For the license conditions that have been fulfilled, the licensee proposed to have them deleted from the FOLs. The licensee is also proposing a minor change to a license reporting requirement.

The FOLs also included exemptions from Commission regulations. The licensee stated that some exemptions have either expired, or are no longer needed since the units are in full compliance with the respective regulations. The licensee proposed to delete these exemptions from the FOLs.

The licensee also proposed to reissue the Technical Specifications without changes, to implement a change to its word processing computer software.

The proposed amendments involve reformatting and removal of conditions

that have been satisfied or that are obsolete. No actual plant equipment, regulatory requirements, operating practices, or analyses are affected by these proposed amendments.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendments are approved. No changes will be made to the design and licensing bases, and applicable procedures at Vogtle Units 1 and 2 will remain the same. Other than the recordkeeping, reporting, or administrative procedures or requirements, no other changes will be made to the FOLs, including the Technical Specifications.

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 nonradiological impacts, the proposed action does not involve any historical sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological 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. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does did not involve the use of any resources not previously considered in the Final Environmental Statement for the Vogtle Electric Generating Plant, Units 1 and 2.

Agencies and Persons Contacted

In accordance with its stated policy, on March 17, 1999, the staff consulted with the Georgia State official, Mr. J. Setzer of the Department of Natural Resources, 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 action, see the licensee's letter dated October 15, 1998, as supplemented by letter dated November 11, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 17th day of March 1999.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7028 Filed 3–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation (Wolf Creek Generating Station); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

Environmental Assessment

Identification of the Proposed Action

The amendment would revise Technical Specification (TS) 4.7.3b, ''Plant Systems—Component Cooling Water System—Surveillance Requirements,'' by deleting the requirement to perform the specified surveillances during shutdown. A change to the applicable Bases would also be included.

The proposed action is in accordance with the licensee's application for amendment dated May 15, 1997, as supplemented by letters dated June 30, August 5, August 28, September 24, October 16, October 23, November 24, December 2, December 17, and December 21, 1998, and January 15, 1999.

Need for the Proposed Action

By letter dated May 15, 1997, Wolf Creek Nuclear Operating Corporation (the licensee) proposed a conversion of the current TSs for Wolf Creek to the Improved Technical Specifications (ITSs). When the TS-required 18-month testing (during shutdown) of the component cooling water system (CCWS) was last conducted, a portion of the required testing was not completed for one pump in each train of the CCWS. The proposed action, an amendment to modify the TSs to allow testing during power operations, would avert a plant shutdown to complete this testing.

Environmental Impacts of the Proposed Action

With regard to potential radiological impacts to the general public, the amendment under consideration involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect the potential for radiological accidents and does not affect radiological plant effluents. No safety limits will be changed or setpoints altered as a result of the TS revision. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and would have no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative 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. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Operation of Wolf Creek Generating Station, Unit No. 1'' dated June 1982.

Agencies and Persons Contacted

In accordance with its stated policy, on March 8, 1999, the staff consulted with the Kansas State official, Mr. Vick Cooper, of the Kansas Department of Health and Environment, 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 action, see the licensee's application for amendment dated May 15, 1997, as supplemented by letters dated June 30, August 5, August 28, September 24, October 16, October 23, November 24, December 2, December 17, and December 21, 1998, and January 15, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 17th day of March 1999.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Management, Project Directorate IV–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7031 Filed 3–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop To Provide Information on the Pilot Plant Performance Indicators

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public workshop to provide information to selected NRC inspectors and licensee staff of the Reactor Oversight Process Pilot Program. This meeting is open to the public.

DATES: The workshop will be held from 8:00 a.m. to 5:00 p.m. April 12 through April 15, 1999. The first two hours of the workshop on April 12 will be dedicated to check-in procedures.

ADDRESSES: The workshop will be held at the Holiday Inn, 1250 Roosevelt road, Glen Ellyn, IL 60137

FOR FURTHER INFORMATION CONTACT: August Spector at 301–415–2140 or Lee Miller at 423–855–6510, Mail Stop: O–5H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 1999, the staff issued SECY–99–007, forwarding the staff's recommendations for a new reactor oversight process. On January 20, 1999, the staff briefed the Commission on the staff's proposal described in SECY–99–007. The following issues represent a brief summary of the concepts presented in SECY–99–007.

Over the last 10 years, commercial nuclear power plants have been operated safely and overall plant performance has improved. This improvement in plant performance can be attributed, in part, to successful regulatory oversight. Despite this success, the agency has noted that the current reactor oversight process (1) is at times not clearly focused on the most safety important issues, (2) consists of redundant actions and outputs, and (3) is frequently subjective, with NRC action taken in a manner that is at times neither scrutable nor predictable.

In the new regulatory oversight process:

- There will be a risk-informed baseline inspection program that establishes the minimum direct inspection effort for all licensees.
- Thresholds will be established for licensee safety performance, below which increased NRC interaction would be warranted.
- Adequate assurance of licensee performance will require assessment of both performance indicators (PIs) and inspection findings.
- Both PIs and inspection findings will be evaluated against risk-informed thresholds, where feasible.
- Crossing a PI threshold and an inspection threshold will have the same meaning with respect to safety significance and required NRC interaction.
- The baseline inspection program will cover those risk-significant attributes of licensee performance not adequately covered by PIs.
- The baseline inspection program will also verify the accuracy of PI data collection and analysis and provide for event response, as appropriate.
- Enforcement actions will be focused on issues that are risk significant.
- Guidelines will be established for identifying and responding to unacceptable licensee performance.

Additionally, the staff will pilot the new reactor oversight process during a 6-month period beginning in June 1999. The purpose of the pilot program is to exercise the new processes (PI reporting, inspection, assessment, and enforcement), to identify process and procedure problems and make appropriate changes and, to the maximum extent possible, evaluate the effectiveness of the new process. Full implementation of the new oversight process will commence pending successful completion of the pilot program, as measured against pre-established success criteria. A notable feature of the pilot program is the use of the Pilot Program Evaluation Panel, consisting of NRC, NEI, industry, public, and State representatives, to aid in evaluating the effectiveness of the pilot program. This workshop will focus on the pilot plant participants and specifically address performance indicator reporting requirements.

Scope of the Public Workshops

The NRC will hold a four day workshop from April 12–15, 1999 to provide information on the new performance indicator reporting requirements to selected NRC inspectors and licensee staff participating in the Reactor Oversight Process Pilot Program. In order to meet the objectives of the workshop, active participants will be limited to 48 NRC and licensee personnel who will be participating in the pilot program. Other interested parties may observe, up to a total of 150 additional individuals. NRC and licensee staff may choose to rotate cognizant individuals into the active participant ranks as applicable. 18 slots will be reserved for the nine pilot plants, 25 for the regional offices, and five seats reserved for NRC Headquarters and Regional Senior Reactor Analysts. The pilot plants are: Hope Creek, Salem Units 1 and 2, Fitzpatrick, Prairie Island Units 1 and 2, Quad Cities Units 1 and 2, Shearon Harris, Sequoyah Units 1 And 2, Ft. Calhoun, and Cooper.

The agenda for the workshop will consist of the following:

—Day 1: registration and check-in, opening remarks, and initiating events performance indicators

—Day 2: mitigating systems and barrier performance indicators.

—Day 3: barrier performance indicators (continued) and Emergency Preparedness performance indicators.

—Day 4: occupational exposure, public exposure, and physical protection performance indicators.

Note: Each day will end with a question and answer session.

Workshop Pre-Registration

Active participants and observers at the workshop are requested to pre-register with the NRC approximately two weeks before the workshop. Attendees may pre-register in either of the following ways:

(1) Fax to Elaine Toro at (301) 415–3707

(2) Mail to: U.S. Nuclear Regulatory Commission, Attn: Elaine Toro, Office of Nuclear Reactor Regulation, Mailstop O5H4, Washington, D.C. 20555–0001

Dated at Rockville, Maryland, this 17th day of March, 1999.

For the Nuclear Regulatory Commission.

William M. Dean,

Chief Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

Cornerstone Performance Indicator Workshop Registration, Holiday Inn, Glen Ellyn, IL, April 12—15, 1999

(Please Print)

Name: _____
(last) (first)

Title: _____

Address: _____
(department, division or unit)

_____
(street or P.O. box)

_____
(city) (state) (zip code)

Pilot Plant (Yes/No) _____

Telephone (home): _____

Telephone (business): (ext) _____

E-mail: _____

Name (for name badge): _____

Mail your registration form to: Elaine Toro, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Mail Stop O–5H2, Washington, DC 20555.

Fax your registration form to: 301–415–3707 Attention: Elaine Toro.

THIS REGISTRATION FORM IS FOR THE WORKSHOP ONLY. PLEASE MAKE HOTEL RESERVATIONS SEPARATELY.

[FR Doc. 99–7030 Filed 3–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 22, 29, April 5, and 12, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 22

Thursday, March 25

2:30 p.m.—Briefing on Part 35 Rulemaking (Public Meeting) (Contact: Patricia Holahan, 301–415–8125)

Friday, March 28

9:00 a.m.—Briefing on Proposed Reactor Oversight Process Improvements & Enforcement (Public Meeting) (Contact: William Dean, 301–415–2240)

12:30 p.m.—Affirmation Session (Public Meeting)

*(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)

a: Changes to Paragraph (h) of 10 CFR Part 50.55a, ''Codes and Standards''

Week of March 29—Tentative

There are no meetings scheduled for the Week of March 29.

Week of April 5—Tentative

There are no meetings scheduled for the Week of April 5.

Week of April 12

Wednesday, April 14

9:00 a.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7)

11:00 a.m.—Briefing on Remaining Issues Related to Proposed Restart of Millstone Unit 2 (Public Meeting) (Contact: William Dean, 301–415–2240)

Thursday, April 15

2:00 p.m.—Briefing on Status of Uranium Recovery (Public Meeting) (Contact: King Stablein, 301–415–7238)

3:00 p.m.—Affirmation Session (Public Meeting) (If needed)

Friday, April 16

9:30 a.m.—Briefing on Rulemaking For Generally Licensed Devices (Public Meeting) (Contact: Patricia Holahan, 301–415–8125)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on March 17, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Radiological Criteria for License Termination of Uranium Recovery Facilities'' (PUBLIC MEETING) be held on March 17, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or *dkw@nrc.gov*.

Dated: March 19, 1999.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary.

[FR Doc. 99–7189 Filed 3–19–99; 2:12 pm]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised date collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of

automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment; OMB 3220–0179.

Under section 2(e)(3) of the Railroad Retirement Act (RRA), an annuity is not payable for any month in which a beneficiary works for a railroad. In addition, an annuity is reduced for any month in which the beneficiary works for an employer other than a railroad employer and earns more than a prescribed amount. Under the 1988 amendments to the RRA, the Tier II portion of the regular annuity and any supplemental annuity must be reduced by one dollar for each two dollars of Last Pre-Retirement Non-Railroad Employment (LPE) earnings for each month of such service. However, the reduction cannot exceed fifty percent of the Tier II and supplemental annuity amount for the month to which such deductions apply. LPE generally refers to an annuitants last employment with a non-railroad person, company, or institution prior to retirement which was performed whether at the same time of, or after an annuitant stopped railroad employment. The collection obtains earnings information needed by the RRB to determine if possible reductions in annuities because of Last Pre-Retirement Non-Railroad Employment Earnings (LPE) are in order.

The RRB utilizes Form G–19L to obtain LPE earnings information from annuitants. Companion Form G–19L.1, which serves as an instruction sheet and contains the Paperwork Reduction/ Privacy Act Notice for the collection accompanies each Form G–19L sent to an annuitant. One response is requested of each respondent. Completion is required to retain a benefit. The RRB proposes minor editorial changes to Form G–19L and Form G–19L.1.

The estimated annual respondent burden is as follows:

Estimated number of responses: 5,000.

Estimated completion time per response: 15 minutes.

Estimated annual burden hours: 1,250.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–7098 Filed 3–22–99; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Certification of Relinquishment of Rights.

(2) *Form(s) submitted:* G–88.

(3) *OMB Number:* 3220–0016.

(4) *Expiration date of current OMB clearance:* 5/31/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 3,600.

(8) *Total annual responses:* 3,600.

(9) *Total annual reporting hours:* 360.

(10) *Collection description:* Under Section 2(e)(2) of the Railroad Retirement Act, the Railroad Retirement Board must have evidence that an annuitant for an age and service, spouse, or divorced spouse annuity has relinquished their rights to return to the service of a railroad employer. The collection provides the means for obtaining this evidence.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–7097 Filed 3–22–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension:

Rule 7d–1, SEC File No. 270–176, OMB Control No. 3235–0311.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collections of information discussed below.

Section 7(d) of the Investment Company Act of 1940 [15 U.S.C. 80a–7(d)] (the ''Act'' or ''Investment Company Act'') requires an investment company (''fund'') organized outside the United States (''foreign fund'') to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds both that it is legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 [17 CFR 270.7d–1] under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company (''Canadian fund'') may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, funds in other jurisdictions generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting the fund's registration under the Act.

The rule requires Canadian funds that propose to register under the Act to file an application with the Commission that contains various undertakings and agreements by the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 [15 U.S.C. 77a–77z–3], and the Securities Exchange Act of 1934 [15 U.S.C. 78a–78mm], as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that ''by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the [Act].'' The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d–1 are associated with complying with the Act's provisions. These information collection requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that three Canadian funds and one other foreign fund are registered under rule 7d–1. Only one of the registered funds, a Canadian entity, currently is active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the fund's list of affiliated persons. The Commission staff estimates that the rule requires a total of three responses each year. The staff estimates that a fund makes two responses each year under the rule, one response to maintain records in the United States and one response to update its list of affiliated persons. The Commission staff further estimates that a fund's investment adviser makes one response each year under the rule to maintain records in the United States. Commission staff estimate that each recordkeeping response requires 12.5 hours of support staff time at a cost of $15 per hour, and the response to update the list of affiliated persons requires 0.25 hours of support staff time, for a total annual burden of 25.25 hours at a cost of $379. The estimated burden hours are a decrease from the current allocation of 101 burden hours. The decrease of 75.75 hours reflects the current inactive status of two Canadian registrants and one other foreign registrant, as well as the staff's administrative experience with the rule.

If a fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule 7d–1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for these applications.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

The Commission believes that the one active Canadian registrant and its associated persons may spend (excluding the cost of burden hours) approximately $500 each year in maintaining records in the United States. These estimated costs include fees for a custodian or other agent to retain records, storage costs, and the costs of transmitting records by computer mail or otherwise.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $16,000 to comply with the rule's initial information collection requirements. The costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records typically maintained in paper form (such as minutes of directors' meetings), and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that the fund and its sponsors would incur these costs immediately and that the annualized cost of the expenditures would be $16,000 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no investment company has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 15, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6973 Filed 3–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–2371; 812–11322]

The Brinson Funds, et al.; Notice of Application

March 17, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit redemptions in-kind of shares of certain registered investment companies by certain shareholders who are affiliated persons of the investment companies.

APPLICANTS: The Brinson Funds (''Brinson''), Brinson Relationship Funds (the ''Trust''), and Brinson Partners, Inc. (''Partners'').

FILING DATES: The application was filed on September 24, 1998, and amended on March 3, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 12, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street, NW, Washington, D.C. 20549–0609. Applicants, Brinson Partners, Inc., 209 South LaSalle Street, Chicago, IL 60604–1295.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Brinson, a Delaware business trust, is an open-end management investment company registered under the Act, and currently consists of thirteen series (the ''Brinson Funds''). The Trust, a Delaware business trust, is an open-end management investment company registered under the Act, and currently consists of seventeen series (the ''Trust Funds''). The Brinson Funds, the Trust Funds, and other registered open-end management investment companies or series thereof that may in the future be advised by Partners or any person controlling, controlled by, or under common control with Partners, are referred to collectively as the ''Funds.''

2. Partners is registered as an investment adviser under the Investment Advisers Act of 1940. Partners provides investment advisory services to the Funds, and manages the daily investment and business affairs of the Funds, subject to the policies of the boards of trustees of Brinson and the Trust (the ''Boards''). Each of the Boards has three trustees, all of whom are not ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Non-Interested Trustees'').

3. The prospectuses of the Brinson Funds and the Trust Funds provide that, if condition exist which make cash payments undesirable, any request for redemption of a Fund's shares may be honored by making payment in whole or impart in securities. The payment would be made on a pro rata basis, monitored by Partners, which the securities valued in the same manner as they would be for purposes of computing the Fund's net asset value. This redemption procedure presently applies to all shareholders other than shareholders who are ''affiliated persons'' of the Funds within the meaning of section 2(a)(3) of the Act (''Non-Covered Shareholders'').

4. Applicants request relief to permit the Funds to satisfy redemption requests make by shareholders who are ''affiliated persons'' of the Funds solely within the meaning of section 2(a)(3)(A) of the Act (''Covered Shareholders'') because they own 5% or more of a Fund's outstanding shares by distributing portfolio securities in kind.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to knowingly ''purchase'' from such registered investment company any security or other property (except securities of which the seller is the issuer). Under section 2(a)(3)(A) of the Act, an ''affiliated person'' includes any person owning 5% or more of the outstanding voting securities of such other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities by a Covered Shareholder, the proposed redemption in-kind would be prohibited by section 19(a)(2).

2. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt classes of persons or transactions from the Act, where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from the provisions of section 17(a) of the Act to permit Covered Shareholders to redeem their shares in-kind from the Funds. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the proposed transactions meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that the terms of the proposed in-kind redemptions are reasonable and fair. Applicants state that Covered Shareholders who wish to redeem shares receive the same ''in-kind'' distribution of securities and cash on the same basis as Non-Covered Shareholders wishing to redeemshares. Applicants further state that the securities to be distributed in-kind will be valued in the same manner as that

used by each Fund to determine its net asset value.

6. Applicants state that the proposed in-kind redemptions are consistent with the investment policies of the Funds. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because there will not be discriminatory practices on the part of investment company affiliates to the detriment of other security holders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities distributed pursuant to a redemption in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed on a pro-rata basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as a Fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of a Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivable sand prepaid expenses), net of all liabilities (including accounts payable). In addition, a Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares and accruals on such securities.

3. The In-Kind Securities will be valued in the same manner as they would be valued for purposes of computing a Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market, or if there is no such reported price, the average of the most recent bid and asked price (or, if no such price is available, the last quoted bid price).

4. The Trusts' Boards, including a majority of the Non-Interested Trustees, will determine no less frequently then annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each affected Fund as reflected in its prospectus. In addition, the Boards will make and approve such changes as they deem necessary in the procedures for monitoring the applicants' compliance with the terms and conditions of the application.

5. The relevant Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each such redemption setting forth a description of each security distributed, the identity of the Covered Shareholder, the terms of the distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6972 Filed 3–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23743; File No. 812–11454]

Western Reserve Life Assurance Co. Of Ohio, et al.

March 17, 1999.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of application for an order under Section 6(c) the Investment Company Act of 1940 (the ''1940 Act'') granting relief from Rule 6e–2(c)(1) and from certain provisions of the Act and Rules thereunder specified in paragraph (b) of Rule 6e–2; and from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rules 6e–2(b)(12) and 22c–1.

APPLICANTS: Western Reserve Life Assurance Co. of Ohio (''Western Reserve''), WRL Series Life Account (''Western Reserve Separate Account''), PFL Life Insurance Company (''PFL''), Legacy Builder Variable Life Separate Account (''PLF Separate Account''), and AFSG Securities Corporation (''AFSG'') (collectively, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary: (1) to permit them to offer and sell certain variable life insurance policies with modified single premiums (''Policies''); and (2) to permit other NASD member broker-dealers which may become the principal underwriter for such Policies (''Future Underwriters'') to offer and sell such Policies.

FILING DATE: The application was filed on January 7, 1999.

HEARING OR NOTIFICATION OF HEARING: The Commission will issue an order granting the application 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, in person or by mail. The Commission should receive hearing requests by 5:30 p.m. on April 12, 1999, and the requests 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 requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Thomas E. Pierpan, Esq., Western Reserve Life Assurance Co. of Ohio, 570 Carillon Parkway, St. Petersburg, Florida 33716; and Frank A. Camp, Esq., PFL Life Insurance Company, 4333 Edgewood Road, NE, Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, Mail Stop 1–2, 450 Fifth St., N.W., Washington, D.C. 20549–0102 (tel (202) 942–8090).

Applicants' Representations

1. Western Reserve, a stock life insurance company, is a wholly owned subsidiary of First AUSA Life Insurance Company, a stock life insurance company that is a wholly owned subsidiary of AEGON USA, Inc., a financial services holding company.

2. Western Reserve established the Western Reserve Separate Account under Ohio law to serve as a funding vehicle for variable life insurance policies issued by Western Reserve and its affiliates. The Western Reserve Separate Account is registered under the Act as a unit investment trust. In connection with the Policy issued by Western Reserve, the Western Reserve Separate Account currently has 12 subaccounts, each of which invests in shares of a corresponding portfolio of a mutual fund registered under the Act as an open-end management investment company.

3. PFL, a stock life insurance company, is a wholly owned indirect subsidiary of AEGON USA, Inc.

4. PFL established the PFL Separate Account under Iowa law to serve as a funding vehicle for variable life insurance policies issued by PFL. The PFL Separate Account is registered under the Act as a unit investment trust. The PFL Separate Account currently has 19 subaccounts, each of which invests in shares of a corresponding portfolio of a mutual fund registered under the Act as an open-end management investment company. The Application refers to Western Reserve and PFL, when used together, as the ''Companies,'' and the Application refers to the Western Reserve Separate Account and the PFL Separate Account, when used together, as the ''Separate Accounts.''

5. AFSG is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc. (''NASD''). AFSG is the principal underwriter of the Policies issued by both Western Reserve and PFL.

6. The Policies are modified single premium variable life insurance policies that prospective owners may purchase on an individual or a joint and last survivor basis. The Companies will rely on Rule 6e–2 in connection with the Policies, although the Policies also contain features not contemplated by Rule 6e–2.

7. The minimum premium required under the Policy for a given specified amount depends on a number of factors, including the age, sex, and risk class of the proposed insured(s). The Companies currently require a minimum initial premium of $20,000; however, each Policy will specify the minimum initial premium that the applicant must pay.

8. The Companies provide limited flexibility to add additional premiums since the Companies require that the initial premium equal the maximum amount that can be applied to the Policy at issue. In general, owners of the Policies may not pay any additional premiums on the Policy for several years in order for the Policy to continue to qualify on a life insurance contract as defined in Federal tax laws and regulations.

9. Policy owners may instruct the Companies to allocate from 1% to 100% of premiums to one or more subaccounts of the Separate Accounts and to the fixed account options. Policy owners may change the allocation instructions for additional premiums without charge at any time by providing the Companies with written notification. The Companies may limit the number of premium allocation changes.

10. If the Companies sell a Policy in a state that requires the return of initial premium upon exercise of the free look right, then the Companies will allocate the initial premium (plus interest) to a reallocation account. The premium will remain in the reallocation account (earning interest) for the length of time of the state's free look period plus five days. After this time, the Companies will reallocate all amounts in the reallocation account to the subaccounts and fixed account options selected on the Policy application. In other states, once underwriting is completed, the Companies will allocate premiums to the subaccounts and the fixed account options according to Policy owner instructions.

11. The value of amounts allocated to the subaccounts of the Separate Accounts will vary with the investment performance of the portfolios underlying the subaccounts. Policy owners bear the entire risk for amounts allocated to a subaccount.

12. The Policies provide for a death benefit that the Companies will determine as of the insured's date of death (the last insured, of a joint Policy). The death benefit is equal to the greater of: (1) the specified amount; or (2) the sum of the Policy's value in the subaccounts and the fixed accounts (''cash value'') on the date the insured dies multiplied by the applicable limitation percentage. The limitation percentage is a percentage based on the insured's age at the beginning of each Policy year. For joint Policies, the Companies will use the age of the younger insured. Policy owners may not increase or decrease the specified amount under the Policy.

13. When applying for a Policy, owners may also purchase a guaranteed minimum death benefit rider whereby the Companies guarantee to provide a death benefit (minimum $1,000) as follows: (1) If the net surrender value (a Policy's cash value minus any surrender charge and minus any outstanding Policy loan) on any monthly deduction day is not sufficient to cover the monthly Policy charge on that day, then coverage will be provided as indicated below, and no grace period will begin, provided that the owner has not taken any Policy loans; and (2) If a death benefit is payable due to the provisions of the guaranteed minimum death benefit rider, then the following minimum death benefit is applicable:

- During the first 15 Policy years, or before the Policy anniversary next following the insured's (or younger joint insured's) 75th birthday, if sooner, the minimum death benefit payable will be as described at the beginning of this paragraph 13 above.
- After the first 15 Policy years, or on or after the Policy anniversary next following the insured's (or younger joint insured's) 75th birthday, if sooner, the minimum death benefit payable will be the initial premium, reduced by any partial withdrawals.

14. Owners of a Policy may request a partial withdrawal after the first Policy year. The Companies place the following limitations on partial withdrawals: (1) only 1 partial withdrawal is allowed during a 12-month period; and (2) the maximum partial withdrawal is equal to the excess of the cash value minus total outstanding loans, minus any interest owed on the loans, and minus total premiums paid.

15. A partial withdrawal will reduce the specified amount (or the guaranteed minimum death benefit) under the Policy by an amount equal to the amount of the partial withdrawal multiplied by the ratio of the initial specified amount to the initial premium.

16. The Companies do not deduct any charges from premiums before allocating the premiums to the subaccounts of the Separate Accounts and the fixed account options according to the Policy owner's instructions.

17. On each valuation date, the Companies deduct a daily charge at the annual rate of 0.50% from the assets in the subaccounts as part of the calculation of the unit value for each subaccount.

18. The Companies make a monthly deduction from the Policy's cash value

on the Policy's effective date and on each monthiversary (the same day of each succeeding month as the Policy's effective date, or, if there is not comparable valuation date, the next valuation date). The Companies make the deduction from each subaccount and the fixed account options in accordance with the current allocation instructions. If the value of any account is insufficient to pay that account's portion of the monthly deduction, the Companies will take the monthly deduction on a pro-rata basis from all accounts (that is, in the same proportion that the value in each subaccount and the fixed accounts bears to the total cash value on the monthiversary).

19. The monthly deduction is equal to: (1) the monthly Policy charge based each Separate Account's assets; plus (2) the monthly Policy charge based on each fixed account's assets; plus (3) the monthly cost of insurance charge for a Policy, if any; plus (4) the monthly charge for any benefits provided by riders attached to the Policy.

20. The monthly Policy charge for each Policy varies based on the Policy year, gender, and whether the Policy is issued on a single life basis or a joint and last survivor basis.

21. The monthly Policy charge, based on each Separate Account's assets is equal to: (1) The separate account monthly deduction charge (see table below) divided by 12; multiplied by (2) the sum of the subaccount values on the monthiversary.

22. The monthly Policy charge, based on each fixed account's assets is equal to: (1) The fixed account monthly deduction charge (see tables below) divided by 12; multiplied by (2) the fixed account value on the monthiversary, minus any outstanding Policy loan(s).

Single life policy	Single life policy	Male/unisex		Female	
		Policy years 1–10 (percent)	Policy years 11+ (percent)	Policy years 1–10 (percent)	Policy years 11+ (percent)
Separate account charges (annualized rate).	Monthly deduction charge (as a % of separate account assets).	2.00	1.00	1.85	.85
Fixed account charges (annualized rate)	Monthly deduction charge (as a % of fixed account assets).	2.00	1.00	1.85	.85

Joint & survivor life policy	Joint & survivor life policy	Policy years 1–10 (percent)	Policy years 11+ (percent)
Separate account charges (annualized rate)	Monthly deduction charge (as a % of separate account assets).	1.50	.50
Fixed account charges (annualized rate)	Monthly deduction charge (as a % of fixed account assets).	1.50	.50

23. The Companies reserve the right to assess a monthly cost of insurance charge to compensate them for underwriting the death benefit. The charge would depend on a number of variables (age, sex, risk class, number of years the Policy has been in force) that would cause it to vary from Policy to Policy and from monthiversary to monthiversary. If applicable, the Companies would calculate the cost of insurance each month for the specified amount at issue. The amount of this charge may not exceed the death benefit minus the cash value, and the difference multiplied by the appropriate monthly cost of insurance rate. The Companies do not currently assess this charge. If the Companies begin to assess this charge, the Companies will waive surrender charges upon any surrender of the Policy.

24. The monthly deduction also will include a charge for any supplemental benefits added to a Policy by rider.

25. The Companies currently assess a $10 fee for the 13th and each additional transfer during a Policy Year. The transfer charge is deducted from the amount transferred.

26. The value of the net assets of each subaccount will reflect the investment advisory fees and other expenses incurred by the corresponding portfolio in which the subaccount invests.

27. If the owner selects the guaranteed minimum death benefit rider at application, on each monthiversary the Companies will deduct 0.02% of the cash value in the Policy.

28. If an owner surrenders his Policy during the first 9 Policy years, the Companies will deduct a surrender charge from the cash value and pay the remaining cash value to the owner. The payment the owner receives is the net surrender value. The Companies reduce the surrender charge at older ages in compliance with state laws. The Companies calculate the surrender charge as a percentage of premium(s) paid based on the following schedule:

Policy year	Contingent surrender charge (as a percentage of initial premium)
1	9.75
2	9.50
3	9.25
4	9
5	8
6	7
7	6
8	4
9	2
10	0

Applicants' Legal Analysis

Definition of ''Variable Life Insurance Contract''

1. Rule 6c–3 grants exemptions from those provisions of the Act (except for Sections 7 and 8(a)) that are specified in paragraph (b) of Rule 6e–2 to certain separate accounts of life insurance companies that support variable life insurance policies. Specifically, the exemptions provided by Rule 6c–3 are available only to separate accounts registered under the Act whose assets are derived solely from the sale of ''variable life insurance contracts'' that meet the definition set forth in Rule 6e–2(c)(1), and from certain advances made by the insurer. Rule 6e–2(c)(1) defines the term ''variable life insurance contract'' to include only life insurance policies that provide a death benefit and a cash surrender value, both of which vary to reflect the investment

experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in the policy. As discussed above, the Policies' death benefit provides that the beneficiary will receive the greater of (1) the specified amount, or (2) the cash value multiplied by the appropriate limitation percentage. Thus, Applicants submit that the death benefit will not necessarily vary to reflect the investment experience of the Separate Account(s). Applicants request relief from the definition of ''variable life insurance contracts'' set forth in Rule 6e–2(c)(1) because Applicants must rely on certain exemptive provisions in Rule 6e–2(b), as described below, in connection with the issuance and sale of the Policies.

2. Applicants state that they must avail themselves of certain relief provided by Rule 6e–2(b), as set forth below, in order to issue, sell, and maintain the Policies.[1] Applicants request relief to the extent necessary to permit reliance on the exemptions provided in each of the provisions of paragraph (b) of Rule 6e–2 that are set forth below, in connection with the issuance and sale of the Policies.

(a) Paragraph (b)(3)—Applicants request relief to permit the Separate Accounts to rely on paragraph (b)(3)(ii) of Rule 6e–2 in order to effect compliance with Section 8(b) of the Act (regarding the filing of a registration statement with the Commission).

(b) Paragraph (b)(4)—Applicants request relief to permit Applicants to apply the eligibility restrictions of Section 9 of the Act in the fashion contemplated by paragraph (b)4).

(c) Paragraph (b)(5)—Applicants request relief to permit Applicants to rely on the exemptions provided from Section 13(a) of the Act relating to insurance regulatory authority imposing certain requirements on the investment policies of the Separate Accounts; and disapproval by the Companies of changes in the Separate Accounts' investment policies initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(5); and to rely on the relief provided by (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(5).

(d) Paragraph (b)(6)—Applicants request relief to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(6).

(e) Paragraph (b)(7)—Applicants request relief to permit Applicants to rely on the exemptions provided from Section 15(a), (b) and (c) relating to an insurance regulatory authority disapproving advisory or underwriting contracts; disapproval by the Companies of changes in any principal underwriter for the Separate Accounts initiated by Policy owners; and disapproval by the Companies of changes in any investment adviser to the Separate Accounts initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(7); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(7).

(f) Paragraph (b)(8)—Applicants request relief to permit Applicants to rely on the exemptions provided from Section 16(a) relating to an insurance regulatory authority disapproving or removing a member of the board of directors of a separate account under circumstances contemplated by and in accordance with the requirements of paragraph (b)(8); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2, which in turn refers to the conditions of paragraph (b)(8).

(g) Paragraph (b)(9)—Applicants request relief to permit Applicants to reply on the exemptions provided from Section 17(f) in order to maintain separate account assets in the custody of the Companies or an affiliate thereof, in accordance with the requirements of paragraph (b)(9).

(h) Paragraph (b)(10)—Applicants request relief to permit Applicants to reply on the exemptions provided from Section 18(i) in order to provide for variable contract owner voting as contemplated by and in accordance with the requirements of paragraph (b)(10).

(i) Paragraph (b)(12)—Applicants request relief to permit Applicants to rely on the exemptions provided from Section 22(d), 22(e) and Rule 22c–1 in connection with issuance, transfer and redemption procedures for the Policies, including premium processing, premium rate structure, underwriting standards, and the benefit provided by the Policies, as contemplated by and in accordance with the requirements of paragraph (b)(12).

(j) Paragraph (b)(14)—Applicants request relief to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(14).

(k) Paragraph (b)(15)—Applicants request relief to permit Applicants to rely on the exemptions provided from Section 9(a), and to facilitate the voting by the Companies of shares of management investment companies held by the Separate Accounts in disregard of Policy owner instructions under the circumstances contemplated by, and in accordance with the requirements of, paragraph (b)(15). Relief is also requested to permit Applicants to rely on he exemptions provided from Sections 14(a), 15(a), 16(a), and 32(a)(2) in connection with any registered management investment company established by the Companies in the future in connection with the Policies, in accordance with the requirements of paragraph (b)(15), and paragraphs (b)(5), (b)(7), (b)(8), and (b)(14) of Rule 6e–2.

3. Applicants submit that the death benefit under the Policies may vary to reflect investment experience within the meaning of Rule 6e–2(c)(1)(i). Applicants state, however, the structure of the death benefit may not precisely meet with the definitional requirements of Rule 6e–2(c)(1) since the death benefit will vary with investment experience only when the cash value is sufficiently large that, in order to qualify a Policy as life insurance for Federal income tax purposes, the death benefit must be increased. Applicants state that this may happen, for example, because of very favorable investment experience, the payment of additional premiums, or both. Under ordinary circumstances, it is likely that the death benefit will not change for several years as a result of any favorable investment experience. Therefore, Applicants request relief to the extent necessary to permit reliance on the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1), and on the exemptions provided in each of the provisions of paragraph (b) of Rule 6e–2 that are set forth above, under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), to the extent necessary to permit the offer and sale of the policies in reliance on Rule 6e–2.

4. Applicants further submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Separate Accounts and the Policies, and that the exemptions provided by these rules should be granted to the Separate Accounts and to the other Applicants on the terms specified in those rules, except to the

[1] Applicants state that certain of the relief requested may not currently be necessary in light of the structure of each of the Separate Accounts as a ''unit investment trust,'' but would become necessary if either of the Separate Accounts were restructured as an open-end management company in the future. The Policies permit such a restructuring.

extent that further exemption from those terms is specifically requested herein.

Redeemability

5. Section 27(i)(2)(A) provides that no registered separate account funding variable insurance contracts or its sponsoring insurance company shall sell such a contract unless it is a ''redeemable security.'' Section 2(a)(32) defines a ''redeemable security'' as any security (other than short-term paper) entitling its holder to receive ''approximately his proportionate share of the issuer's current net assets'' (or the cash equivalent thereof) upon presentation to the issuer. Applicants request relief from the requirement in Section 27(i)(2)(A) that the Policy be a ''redeemable security,'' and from the definition of ''redeemable security'' set forth in Section 2(a)(32), in connection with the issuance and sale of the Policies and the surrender charge applicable to the Policies.

6. Rule 22c–1 promulgated under Section 22(c) of the Act requires that a security be redeemed at a price based on the current net asset value of the security next computed after receipt of request for surrender. If the conditions of Rule 6e–2(b)(12) are satisfied, paragraph (b)(12) provides certain exemptions from Rule 22c–1. However, a surrender charge such as the one provided under the Policies may not be contemplated by Rule 6e–2(b)(12), and thus may be deemed inconsistent with the foregoing provisions, to the extent that the charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after surrender of the Policy. Accordingly, Applicants request relief from Rule 22c–1 and Rule 6e–2(b)(12) to the extent necessary to permit the deduction of the surrender charge on surrender of a Policy.

7. Although Section 2(a)(32) does not specifically contemplate the imposition of a charge at the time of redemption, Applicants state that such charges are not necessarily inconsistent with the definition of ''redeemable security.''

8. Applicants submit that each of the Policies will be a ''redeemable security.'' Each Policy provides for full surrender of the Policy for its net surrender value. The prospectuses for the Policies will disclose the nature of the surrender charge. Accordingly, Applicants state that there will be no restriction on, or impediment to, surrender that should cause a Policy to be considered other than a redeemable security within the meaning of the Act and rules thereunder. Upon surrender, a Policy owner will receive his or her ''proportionate share'' of the assets of the appropriate Separate Account, *i.e.*, the amount of premiums paid, reduced by the amount of all charges and loans, and increased or decreased by the amount of investment performance credited to the Policy.

9. Applicants, consistent with their current procedures, will determine the net surrender value under a Policy in accordance with the requirements of Rules 6e–2(b)(12) and 22c–1 and on a basis next computed after receipt of a Policy owner's request for surrender the of the Policy.

10. Applicants also state that the charge structure has been accepted as an appropriate feature of life insurance products under Rule 6e–3(T), as well as pursuant to exemptive relief granted by the Commission.

11. Therefore, Applicants respectfully submit that the surrender charge is consistent with the principles and policies underlying the limitations in Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rules 6e–2(b)(12) and 22c–1 thereunder.

Class Exemption for Future Underwriters

12. Applicants also seek the relief herein with respect to Future Underwriters, a class consisting of NASD member broker-dealers which may, in the future, act as principal underwriter of the Policies.

13. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act. Further, Applicants state that, without the requested class relief, exemptive relief any Future Underwriter would have to be requested and obtained separately. Applicants assert that such additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants state that if Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed in their application, investors would not receive additional protection or benefit, and investors and Applicants could be disadvantaged by increased costs from preparing additional requests for relief. Applicants argue that the requested class relief will promote competitiveness in the variable life insurance market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants submit, for all the reasons stated herein, that their request for class exemptions 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, and that an order of the Commission including such class relief, should, therefore, be granted.

Conclusion

Applicants submit, for all of the reasons stated therein, that their request for exemptions are 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 Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7089 Filed 3–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23740; File No. 812–11378]

Protective Life Insurance Co., et al.

March 16, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 (''Act'') approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of Oppenheimer Variable Account Funds (''Oppenheimer Variable Funds'') representing interests in its Oppenheimer Money Fund for shares of Protective Investment Company (''PIC'') representing interests in its Money Market Fund and held by the Life Account, Annuity Account, and Account A (together, the ''Accounts'') to support variable life insurance contracts or variable annuity contracts (collectively, the ''Contracts'') issued by Protective Life or American Foundation.

APPLICANTS: Protective Life Insurance Company (''Protective Life''), American Foundation Life Insurance Company (''American Foundation''), Protective Variable Life Separate Account (''Life Account''), Protective Variable Annuity Separate Account (''Annuity Account''), and Variable Annuity Account A of American Foundation (''Account A'').

FILING DATE: The application was filed October 28, 1998 and amended and restated on February 9, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 12, 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 who wish to be notified of a hearing may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Steve M. Callaway, Esq., Protective Life Insurance Company, 2801 Highway 280 South, Birmingham, AL 35223. 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: Elisa D. Metzger, Senior Counsel, and/or Susan M. Olson, Branch Chief, on (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 or call (202) 942–8090.

Applicants' Representations

1. Protective Life is a stock life insurance company organized under Alabama law in 1907 and redomesticated under Tennessee law in 1992. Protective Life provides individual life and health insurance, annuities, group life and health insurance, and guaranteed investment contracts, and is licensed to transact insurance business in 49 states and the District of Columbia. As of December 31, 1997, Protective Life had total assets of approximately $10.4 billion. Protective Life is the principal operating subsidiary of Protective Life Corporation (''PLC''), a Delaware insurance holding company whose stock is traded on the New York Stock Exchange. For the purposes of the Act, Applicants state that Protective Life is the depositor and sponsor of the Life Account and Annuity Account.

2. American Foundation, an Alabama insurance company, is a wholly owned subsidiary of Protective Life. American Foundation provides individual life, annuity, and group dental insurance products, and is licensed to transact insurance business in 30 states, including New York. As of December 31, 1997, the company had assets in excess of $100 million. For the purposes of the Act, Applicants state that American Foundation is the depositor and sponsor of Account A.

3. Protective Life established the Life Account on February 22, 1995, and the Annuity Account on October 23, 1993, as separate investment accounts under Tennessee law. American Foundation established the Account A on December 1, 1997, as a separate investment account under Alabama law. Under both Tennessee and Alabama laws, the assets of each Account attributable to the Contracts through which interests in that Account are issued are owned by either Protective Life or American Foundation as appropriate, but are held separately from all other assets of Protective Life or American Foundation Life, for the benefit of the owners of, and the persons entitled to payment under, those contracts. Consequently, such assets in each Account are not chargeable with liabilities arising out of any other business that Protective Life or American Foundation may conduct. Income, gains and losses, realized or unrealized, from each of these Account's assets are credited to or charged against the amounts allocated to that Account in accordance with the Contracts without regard to other income, gains or losses of Protective Life or American Foundation. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the Act, and is registered with the Commission as an unit investment trust.

4. The Life Account, Annuity Account, and Account A each are divided into seventeen sub-accounts. Each sub-account invests exclusively in shares representing an interest in a separate corresponding investment portfolio (each, a ''Fund'') of one of four series type management investment companies. The assets of the Life Account support variable life insurance contracts and the assets of the Annuity Account and the Account A support variable annuity contracts. Interests in these Accounts offered through such Contracts have been registered under the Securities Act of 1933 (the ''1933 Act'') on Form S–6 (Life Account) and on Form N–4 (Annuity Account and Account A). The Life Account, Annuity Account, and Account A each invest in the Protective Money Market Fund of PIC that is involved in the substitution discussed in this application.

5. PIC was organized as a Maryland corporation on September 2, 1993, to serve as an investment vehicle for Protective Life's and American Foundation Life's variable life and variable annuity separate accounts. PIC is registered under the Act as an open-end management investment company, and is a series investment company as defined by Rule 18f–2 under the Act. PIC issues a separate series of shares of stock in connection with each Fund, and has registered such shares under the 1933 Act on Form N–1A. Protective Investment Advisors, Inc. (''Protective Investment Advisor''), formerly Investment Distributors Advisory Services, Inc., a wholly owned subsidiary of PLC, serves as the investment manager to PIC. PIC currently comprises seven Funds, one of which is the Protective Money Market Fund and is the subject of the proposed substitution.

6. Oppenheimer Variable Funds was organized in 1984 as a Massachusetts business trust, and is registered under the Act as a diversified, open-end management investment company. Oppenheimer Variable Funds is a series investment company as defined by Rule 18f–2 under the Act, and issues a separate series of shares of beneficial interest in connection with each Fund. Oppenheimer Variable Funds has registered shares of such Funds under the 1933 Act on Form N–1A. Oppenheimer Funds, Inc., serves as the investment manager to Oppenheimer Variable Funds. Oppenheimer Variable Funds currently comprises ten Funds, one of which, the Oppenheimer Money Fund, is the subject of the proposed substitution.

7. The Contracts are individual flexible premium variable and fixed life insurance contracts, individual modified single premium variable and fixed life insurance contracts, and individual flexible premium deferred variable and fixed annuity contracts. Protective Life issues three variable life insurance contracts and one variable annuity contract. American Foundation issues one variable annuity contract. The Contracts provide for the accumulation of values on a variable basis, fixed basis or both, and provide settlement or annuity payment options on a fixed basis. Protective Life's variable annuity contract also provides for variable annuity payment options. Protective Life or American Foundation, under each of the Contracts, reserves the right to substitute shares of one Fund for shares of another, including a Fund of

a different management investment company.

8. Under all of the Contracts, subject to certain conditions, Contract owners may make unlimited free transfers (in minimum amounts of $100 or the entire value of the subaccount or fixed account being transferred) between and among the subaccounts of the appropriate Account and a fixed account that is part of Protective Life's or American Foundation's general account. Protective Life and American Foundation, however, under each of the Contracts, reserve the right to limit transfers to 12 per contract year and to charge a transfer fee of $25 for each transfer after the twelfth in a contract year. Applicants also serve the right to restrict the maximum amount which may be transferred from the fixed account in any contract year to the greater of (i) $2500, or (ii) 25% of the fixed account value.

9. Protective Investment Advisors has recommended to Protective Life and American Foundation that it cease operating Protective Money Market Fund. Since its inception, Protective Money Market Fund has been relatively small for several reasons, including the fact that it is only offered in Protective Life or American Foundation products and that Contracts owners generally do not allocate contract value to the Fund on a long-term basis. As a result, Protective Money Market Fund has been unable to generate a sufficient level of assets to achieve any significant economics of scale, and has not been able to achieve above-average performance results or otherwise distinguish itself from other money market funds. Likewise, the small size of the Fund results in little income being generated from management fees. Conversely, due to the requirements of Rule 2a–7 under the Act, management of the Fund is time consuming and difficult for either Protective Investment Advisors or the subadviser retained by Protective Investment Advisors to manage the day-to-day operations of the Fund. In light of the fact that a number of unaffiliated mutual fund organizations have large and successful insurance product money market funds in which the Accounts could invest, the foregoing factors have led Protective Life and American Foundation to conclude that there is little reason for Protective Investment Advisors to maintain an affiliated money market fund for them. Consequently, after consulting with the PIC's board of directors, Protective Investment Advisors, Protective Life and American Foundation have determined to liquidate Protective Money Market Fund via a substitution.

10. Protective Money Market Fund and Oppenheimer Money Fund have identical investment objectives and achieve these objectives by investing in ''money market'' securities. Both Funds seek to maintain a constant net asset value per share of $1.00. Applicants believe that by making the proposed substitution, they can better serve the interests of Contract owners by offering them a Fund which in recent years has had lower expenses and better performance than Protective Money Market Fund.

11. The assets of Oppenheimer Money Fund have been significantly greater than the assets of Protective Money Market Fund for each of the past three years. For the years 1997, 1996, and 1995, the net assets of the Oppenheimer Money Fund [1] were $126,782,000; $129,719,000; and $65,386,000, respectively. For the years 1997, 1996, and 1995, the net assets of the Protective Money Market Fund [2] were $3,622,000; $6,121,000; and $5,070,000, respectively. As a result of its size. Oppenheimer Money Fund has been able to achieve economies of scale that Protective Money Market could not attain. These economies of scale are reflected in Oppenheimer Money Fund's ratio of total operating expenses to net asset value. Oppenheimer Money Fund's expenses have ranged from one half to one third of those of the Protective Money Market Fund over the past three years.

RATIO OF OPERATING EXPENSES TO AVERAGE NET ASSETS

	1197 (percent)	1996 (percent)	1995 (percent)
Protective Money Market Fund (before reimbursement)	1.42	1.27	1.17
Protective Money Market Fund (after reimbursement)	.60	.60	.60
Oppenheimer Money Fund	.48	.49	.51

12. Applicants believe that Oppenheimer Money Fund will continues to have significantly greater assets than Protective Money Market Fund, and have no reason to believe, given the limited distribution of Protective Money Market Fund's shares and the relatively short-term nature of contract owners' investment in the Fund, that Protective Money Market Fund will match the low expense ratios of Oppenheimer Money Fund in the near future. Likewise, for each of the past three years, Oppenheimer Money Fund has had somewhat higher total returns than Protective Money Market Fund.

	Annual total return		
	1997 (percent)	1996 (percent)	1995 (percent)
Protective Money Market Fund	4.96	4.82	5.32
Oppenheimer Money Fund	5.31	5.13	5.62

[1] Oppenheimer Money Fund pays a monthly investment management fee based upon the average daily net assets of the Fund at an annual rate of .450% of the first $500 million, .425% of the next $500 million, .400% of the next $500 million, and .375% of the average net assets over $1.5 billion.

[2] Protective Money Market Fund pays a monthly investment management fee based upon the average daily net assets of the Fund at an annual rate of .60%. Protective Life or Protective Investment Advisors has voluntarily reimbursed the Fund for expenses in excess of its management fee over each of the last three fiscal years.

Applicants have no reason to believe that, in the near term, the performance of Protective Money Market Fund will match or exceed that of Oppenheimer Money Fund.

13. For the foregoing reasons, Applicants submit that the proposed substitution of Oppenheimer Money Fund for shares of Protective Money Market Fund is in the best interests of Contract owners.

14. Protective Life and American Foundation will redeem Protective Money Market Fund shares for cash and apply the redemption proceeds to the purchase of Oppenheimer Money Fund shares. The proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's contract or policy value, death benefit, or in the dollar value of his or her investment in any of the Accounts. As a result, Contract owners will remain fully invested. Contract owners will not incur any fees or charges as a result of the proposed substitution, nor will their rights nor Protective Life's or American Foundation's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting, and other fees and expenses, will be paid by Protective Life or American Foundation. In addition, the proposed substitution will not impose any tax liability on Contract owners. The proposed substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitution than before the proposed substitution. The proposed substitution will not, of course, 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. Protective Life and American Foundation will not exercise their rights under the Contracts to impose additional restrictions on transfers from the affected subaccount to another subaccount or a fixed account for a period of at least 30 days following the substitution.

15. Applicants state that by supplements to the various prospectuses for the Contracts and the Accounts, all owners of the Contracts have been notified of Protective Life's and American Foundation's intention to take the necessary actions, including seeking the order requested by this application, to substitute shares of Protective Money Market Fund as described herein. The supplements for the Accounts advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in the affected subaccount on the date of the supplement to another subaccount or a fixed account available under a Contract without that transfer counting as a ''free'' transfer permitted under a Contract. The supplements also inform Contract owners that Protective Life and American Foundation will not exercise their rights reserved under the Contracts to impose additional restrictions on transfers from the affected subaccount to another subaccount or a fixed account until at least 30 days after the proposed substitution.

16. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitution, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitution was carried out and that they may make one transfer of all amounts under a Contract invested in the affected subaccount on the date of the notice to another sub-account or a fixed 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 Protective Life and American Foundation will not exercise any rights reserved by either under any of the Contracts to impose additional restrictions on transfers from the affected subaccount to another subaccount or a fixed account until at least 30 days after the proposed substitution. 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 substitution may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by Protective Life or American Foundation (or one of their affiliates) during the 60 days following the proposed substitution. The notices will be preceded or accompanied by a current prospectus for Oppenheimer Variable Funds.

17. Protective Life and American Foundation also are seeking approval of the proposed substitution from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. Applicants request an order from the Commission pursuant to Section 26(b) approving the proposed substitution of securities issued by Oppenheimer Variable Funds for those issued by PIC which are currently held by the Accounts.

2. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust.

3. The Contracts expressly reserve for Protective Life or American Foundation the right, subject to compliance with applicable law, to substitute shares of another investment management company for shares of an investment management company held by an Account or a subaccount of an Account. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. Protective Life and American Foundation each reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

4. Applicants state that in this case the proposed substitution of shares is necessary because Protective Money Market Fund will no longer be offered. Further, Applicants submit that the proposed substitution of shares of Oppenheimer Money Fund for shares of Protective Money Market Fund, will benefit Contract owners by replacing Protective Money Market Fund with a Fund that not only has identical investment objectives but which also has lower expenses and better performance.

5. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts offered after the proposed substitution as they have been with the array of subaccounts offered prior to the substitution. Applicants state that the proposed substitution retains for Contract owners the investment flexibility which is a central feature of the Contracts.

6. Applicants state that the proposed substitution 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 account values into other sub-accounts. Moreover, Applicants state that the Contracts will offer Contract owners the opportunity to transfer

amounts out of the affected subaccount into any of the remaining sub-accounts without cost or other disadvantage. Therefore, Applicants submit that the proposed substitution will not result in the type of costly forced redemption which Section 26(b) was designed to prevent

7. Applicants state that the proposed substitution also is unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their contract or policy values. They also select the specific type of insurance coverage offered by Protective Life or American Foundation under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered Protective Life's or American Foundation's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitution.

8. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitution by Protective Life and American Foundation.

Conclusion

Applicants submit that, for all the reasons and facts summarized herein, the proposed substitution is 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. 99–6971 Filed 3–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41167; File No. SR–CHX–99–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Establishment of Net Capital Requirements for Specialists

March 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Rule 3 of Article XI, and add interpretation and policy .01 thereunder, to increase the minimum net capital requirements for CHX. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Article XI—Financial Responsibility and Reporting Requirements

Rule 3. Net Capital and Aggregate Indebtedness.

(a)(1) *Except as otherwise provided below,* [A] *a* member or member organization shall at all times—

(i) maintain net capital not less than that prescribed by SEC 15c3–1 (17 CFR 240.15c3–1) and

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowings are part of the debt equity total.

(2) A member or member organization that is registered as a specialist on the Exchange whose specialist transactions are effected through and carried in a specialist account cleared by another broker or dealer shall at all times—

(i) maintain, at a minimum, net capital that is the greater of (a) $100,000, or (b) the amount prescribed by SEC 15c3–1 (17 CFR 240.15c3–1), and

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowings are part of the debt equity total.

(3) A member or member organization that is registered as a specialist on the Exchange in less than 200 securities and that clears its own specialist account(s) shall at all times—

(i) maintain, at a minimum, net capital that is the greater of (a) $250,000, subject to the phase-in period set forth in Interpretation and Policy, .01, below, or (b) the amount prescribed by SEC 15c3–1 (17 CFR 240.15c3–1) and,

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowings are part of the debt equity total.

(4) A member or member organization that is registered as a specialist on the Exchange in 200 or more securities and that clears its own specialist account(s) shall at all times—

(i) maintain, at a minimum, net capital that is the greater of (a) $350,000, subject to the phase-in period set forth in Interpretation and Policy .01, below, or (b) the amount prescribed by SEC 15c3–1 (17 CFR 240.15c3–1), and

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowings are part of the debt equity total.

(5) A member or member organization that clears the specialist accounts of another member or member organization registered as a specialist on the Exchange shall, at all times—

(i) maintain, at a minimum, net capital that is the greater of (a) $500,000, subject to the phase-in period set forth in Interpretation and Policy, .01, below, or (b) the amount prescribed by SEC 15c3–1 (17 CFR 240.15c3–1), and

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowings are part of the debt equity total.

[(2)]*(6)* A member or member organization shall promptly notify the Exchange if it ceases to be in compliance with the requirements of clauses (1), *(2), (3), (4) or (5) (which ever is applicable)* of this paragraph (a) or if it becomes obligated to file monthly reports under paragraph (b) of this Rule. A member or member organization shall also promptly notify the Exchange of any material unsecured or partly secured loan, drawing in excess of share of profits, or other obligation owed to the member or member organization by (i) any person, including a subordinated lender, having a capital interest in the member or member organization, (ii) any partner, officer, director or employee of the member or member organization, or (iii) any corporation, firm or entity in which any partner, officer, director or employee of the member or member organization holds office or has a material financial interest. Such notification may show such obligations owed to the member or member organization by category

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

without personal identification, except that personal identification shall be made in respect to any person having such obligations equal to five percent or more of the member or member organization's debt equity total.

[(3)]*(7)* The Exchange may at any time or from time to time with respect to a particular member or member organization or all members or member organizations or a new member or member organization prescribe greater net capital or net worth requirements than those prescribed under this Rule including more stringent treatment of items in computing net capital or net worth.

Monthly Financial Statements

(a) No exchange in text.

Responsibility of Computations of Net Capital Requirements

(b) No change in text.

Restrictions on Operations

(c) No change in text.

Interpretations and Policies

.01 Phase-in Periods for Minimum Capital Standards for Self-Clearing Specialists and Firms Clearing Specialist Accounts.

On [insert initial effective date], the Exchange adopted separate minimum net capital standards for self-clearing specialists and firms clearing other specialist accounts, as specified in subsections (a)(3), (a)(4) and (a)(5) above. These minimum capital standards are to be phased in over a 12 month period.

Registered as Specialist in Less Than 200 Securities; $250,000 Standard.

The amount specified in Rule 3(a)(3)(i)(a) above shall be: $150,000 effective on [insert initial effective date]; $200,000 effective on [insert date six months from initial effective date]; and $250,000 effective on [insert date twelve months from initial effective date].

Registered as Specialist in 200 or More Securities; $350,000 Standard.

The amount specified in Rule 3(a)(4)(i)(a) above shall be: $200,000 effective on [insert initial effective date]; $275,000 effective on [insert date six months from initial effective date]; and $350,000 effective on [insert date twelve months from initial effective date].

Firms Clearing Other Specialists Accounts; $500,000 Standard.

The amount specified in Rule 3(a)(5)(i)(a) above shall be: $350,000 effective on [insert initial effective date]; $425,000 effective on [insert date six months from initial effective date]; and $500,000 effective on [insert date twelve months from initial effective date].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Speciaists play a very unique role in an auction market. They are responsible to investors, other members, and the Exchange to efficiently and accurately effect transactions in the securities in which they are registered. While specialists often act as agents, they are also required to act as principal at times to ensure that no imbalance between supply and demand in the market occurs. They must also make continuous two-sided quotations in the securities in which they are registered. As such, it is important that specialists are financially stable to fulfill their duties while withstanding regular market fluctuations.

The purpose of the proposed rule change is to establish increased net capital requirements for CHX specialists over and above those currently contained in the SEC's Rule 15c3–1 (''Net Capital Rule'')[3]

Non-Clearing Specialists

Pursuant to the proposed rule change, non-clearing specialists will be required to maintain at a minimum the greater of (i) net capital in the amount of $100,000, or (ii) the amount prescribed by the Net Capital Rule. Current rules only require specialist adherence to the amount set forth in the Capital Rule which is $100,000 at this time. Specialists will also have to continue to comply with the Exchange requirement that subordinated cash borrowing and secured demand notes equal or exceed 50% of their total subordinated borrowing (to the extent that the borrowings are part of their debt equity total).

Specialists will continue to be subject to the provisions of CHX Rule 3 including filing monthly financial statements (in certain circumstances), submitting to regular annual field examinations, and timely and accurately computing their net worth. These provisions must be satisfied using the additional capital requirements imposed herein. For example, CHX Rule 3(b)(1)(i) requires a member organization to file a monthly financial statement for a period of three months if such member organization fails to maintain net capital of at least 120% of the new Exchange minimum requirements.

Self-Clearing Specialists

The proposing rule change will also require members and member organizations registered as specialists that are self-clearing to comply with additional net capital requirements prescribed by the Exchange, depending on whether they are registered as a specialist in less than 200 securities or 200 or more securities. Specifically, such members and member organizations registered as specialists in less than 200 securities will be required to maintain at a minimum the greater of (i) net capital in the amount of $250,000. or (ii) the amount prescribed by SEC Rule 15c3–1.[4] Such members and member organizations registered as specialists in 200 or more securities will be required to maintain at a minimum the greater of (i) net capital in the amount of $350.000, or (ii) the amount prescribed by SEC Rule 15c3–1.[5]

Members That Clear the Accounts of Other CHX Specialists

Finally, the proposed rule change will require members and member organizations that wish to carry the accounts of CHX specialists to comply with additional net capital requirements prescribed by the Exchange. Specifically, such members and member organizations will be required to maintain at a minimum the greater of (i) net capital in the account of $500,000, or (ii) the amount prescribed by SEC 15c3–1 (17 CFR 240.15c3–1). This requirement also applies to CHX specialists that are ''self-clearing'' and that also clear the accounts of other CHX specialists.

Phase-in Periods

The increases to the net capital standards set forth above will be phased-in in three stages over a twelve

[3] 17 CFR 240.15c3–1.

[4] 17 CFR 240.15c3–1.

[5] 17 CFR 240.15c3–1.

month period. The actual phase-in will be set forth in a Notice to Members to be issued within 30 days of the SEC order approving this proposed rule change. The initial phase-in date will be no loner than 60 days from the date of such Notice. The second and third phase-in dates will be six months and twelve months from the initial phase-in date.

The amounts of the phase-in will be as follows:

- For non-clearing specialists, the $100,000 standard will apply as of the initial phase-in date.
- For self-clearing specialist registered in less than 200 securities, the CHX net capital standard for the initial, second and third phase dates will be $150,000, $200,000, and $250,000 respectively.
- For self-clearing specialists registered in 200 or more securities, the CHX net capital standard for the initial, second and third phase dates will be $200,000, $275,000 and $350,000 respectively.
- For members that clear for other specialists, the CHX net capital standard for the initial, second and third phase dates will be $350,000, $425,000, and $500,000 respectively.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–01 and should be submitted by April 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7091 Filed 3–22–99; 8:45 am]

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[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41174; File No. SR–NASD–99–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc.

March 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary. The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NASD under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to NASD Rule 7010. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010 System Services

(a)–(b) No Change

(c)

(1) Consolidated Quotation Service. Existing Paragraph remains the same.

(2) Listed Securities Transaction Credit. For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to either Tape A reports or Tape B reports, an NASD member must have accounted for 500 or more average daily Tape or Tape B reports of over-the-counter transactions (but not in combination) as reported to the Consolidated Tape by the NASD over the period of July 1, 1998 to December 31, 1998, and must continue to average either 500 or more daily Tape A or 500 or more daily Tape B reports (but not in combination) of over-the-counter transactions as reported to the Consolidated Tape by the NASD during the term of the pilot. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both (as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

the case may be, depending on the qualification standards) pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from such pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with October 1, 1998, and ending with the calendar quarter starting on April 1, 1999.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to establish a pilot program to provide a transaction credit[4] to NASD members who exceed certain level of trading activity in exchange-listed securities. The NASD has determined to establish a program regarding these transaction credits to assist in finding ways to lower investor costs associated with trading, and to respond to steps taken by other exchanges that complete for investors order flow in these securities. The NASD has established the program as a limited period pilot program to develop experience with assisting NASD members trading in exchange-listed securities and to learn how best to lower the cost of trading these securities.

Background

Nasdaq's Third Market is a quotation, communication and execution system which allows NASD members to trade stocks listed on the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''AMEX''). The Third Market competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and AMEX.[5] The NASD collects quotations from broker-dealers that trade these securities over-the-counter and provides such quotations to the Consolidates Quotation System for dissemination. Additionally, the NASD collects trade reports from these broker-dealers trading such securities in the over-the-counter market and provides the trade reports to the Consolidated Tape Association (''CTA/CQA'') for inclusion in the Consolidated Tape. As a participant in the CTA and CQA, the NASD earns a share of those organizations' revenue from trades that it reports in NYSE-listed securities (''Tape A'') and in Amex-listed securities (''Tape B''). It is from the NASD's share of these revenues that Nasdaq intends to create credit pools for qualified members.

Nasdaq's transaction credit pilot is intended to both lower costs for Third Market Makers and for their customers, who execute trades in exchange-listed stocks through NASD members and Nasdaq facilities. The NASD believes that lowering the cost of trading increases competition among market centers trading listed securities. The pilot will also allow Nasdaq to evaluate the efficacy of this revenue sharing model and more effectively compete for the retention of Third Market participants with other regional exchanges who have adopted similar revenue distribution methodologies.

Pilot Program

Under the pilot proposal, Nasdaq will first calculate two separate pools of revenue from which credits can be earned—one representing 40% of the gross revenues received from the Consolidated Tape Association (''CTA'') for providing trade reports in NYSE-listed securities executed in the Third Market for dissemination by CTA (''Tape A''), the other representing 40% of the gross revenue received from CTA for reporting AMEX trades (''Tape B''). To earn a credit from either of these pools, an NASD member must have reached a minimum trading level in that market segment for the period of July 1, 1998 to December 31, 1998. The measure that the NASD will use for this pilot period is 500 average daily executions in Tape A (to qualify for the Tape A pool) or 500 average daily executions for Tape B (to qualify for this pool).[6] Only those NASD members who both exceeded this 500 average daily execution threshold during the July to December 1998 time period and continue to average either 500 or more Tape A or 500 or more Tape B daily executions during the term of the pilot will be eligible for transaction credits. If an NASD member is so qualified, it will become part of the pilot's control group, and thus, be eligible to receive a pro-rata portion of the 40% revenue calculation during the term of the pilot.

A qualifying NASD member's transaction credit under the calculation will be determined by taking its percentage of total Third Market Transaction during the applicable calculation period and providing an equivalent percentage from the appropriate Tape A or B calculation pools. Thus, for each calendar quarter, commencing with the calendar quarter that started on October 1, 1998, the NASD will measure a qualified member's trade reported activity for that calendar quarter in each of Tape A and B and create a credit for that member based upon such activity. For example, should a qualifying NASD member's transactions represent 10% of the NASD's Tape A transactions, that member would receive a 10% share of the Tape A 40% calculation pool.

It must be noted that Nasdaq's transaction credit program is being proposed on a pilot basis only. There can be no guarantee that transaction credits will be available to qualifying NASD members beyond the term of the pilot.[7]

Nasdaq believes that the proposed rule change is consistent with the

[4] The transaction credit can be applied to any and all charges imposed by NASD or its non-SRO affiliates. Any remaining balance may be paid directly to the member.

[5] Both CHX and CSE have established similar programs pursuant to Section 19(b)(3)(A). *See* Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (providing a transaction credit for specialists based upon a percentage of the CTA tape revenue); Securities Exchange Act Release No. 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (providing a transaction credit to members on a pro rate basis, based upon a percentage of the quarterly CSE Tape B transaction market share). To remain competitive with these markets, the NASD believes that it must evaluate programs designed to effectively respond to other market's approaches to trading the same securities.

[6] The NASD has chosen to establish the threshold for qualification at 500 trades per day because it believes that such number represents a clear example of a member's commitment to operating in the Third Market and competing for order flow. It also is being used as a rough, temporary measure to balance the credit program incentives against Nasdaq's costs in operating facilities that facilitate Third Market trading. The NASD plans to use the pilot period to carefully evaluate the need for a qualification threshold and, depending on its experience in the pilot, may change or eliminate the threshold at a future date.

[7] Nasdaq also reserves the right to terminate the transaction credit pilot at any time. The NASD will file a proposed rule change to terminate their pilot program.

provisions of Section 15A(b)(6)[8] of the Act in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. Nasdaq believes its pilot is also consistent with Section 15A(b)(5)[9] of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii)[10] of the Act and subparagraph (f) of Rule 19b–4 thereunder[11] in that it establishes or changes a due, fee or other charge.

At any time within 60 days of the filing of such proposed rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6970 Filed 3–22–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41173; File No. SR–Phlx–98–24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Floor Procedure Advice A–1 (Responsibility of Displaying Best Bid and Offer Prices Established on the Equity Floor)

March 15, 1999.

I. Introduction

On July 13, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or the ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchanger Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would update and amend its Equity Floor Procedure Advice A–1 to more closely track the SEC's customer limit order display rule.

On October 22, 1998, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to update and amend its Equity Floor Procedure Advice A–1 to more closely track the SEC's customer limit order display rules. Currently, Advice A–1 (''Responsibility Best Bid and Offer Prices Established on the Equity Floor'') requires specialist to use due diligence to ensure proper and timely display of bids and offers respecting primary issues. For secondary issues, this requirement applies where the bid or offer is equal to or better than the national best bid or offer (''NBBO''). Advice A–1 pre-dates Exchange Act Rule 11Ac1–4,[1] which imposed new display requirements for ''reported securities'' and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act. Since primary stock issues assigned to specialists on regional exchanges are not subject to this requirement, the proposed rule change amends Advice A–1 only with respect to secondary issues that are traded pursuant to unlisted trading privileges (''UTP''). The proposed change amends Advice A–1 to provide that the display requirement for secondary issues is the Commission's display rule, which requires specialists, subject to certain exceptions, to display not only those orders that are at or better than the NBBO, but also those that improve the specialist's quote or add 10% or more to the specialist's quote when the quote is the NBBO.[5]

Currently, Advice A–1 contains a fine schedule, which is administered pursuant to the Exchange's minor rule violation enforcement and reporting plan.[6] Under the proposed amendment,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40554 (October 14, 1998), 63 FR 56685.

[4] The limit order display rule was adopted by the Commission as part of its Order Handling Rules. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Handling Rules Adopting Release''); amended in Securities Exchange Act Release No. 38139 (January 8, 1997), 62 FR 1385 (January 10, 1997).

[5] In the Order Handling Rules Adopting Release, the Commission stated that a customer limit order should be considered *de minimis* if it less than or equal to 10% of the displayed size associated with a specialist's bid or offer. If a customer limit order is *de minimis*, the specialist does not need to add that order to his quote. *See* Order Handling Rules Adopting Release, *supra* note 4, at note 177 and accompanying text. For this reason, the Exchange is requiring a specialist to display only those customer orders that add 10% or more to the size of the specialist's quote.

[6] The Phlx's minor rule violation enforcement and reporting plan (''minor rule plan''), codified in Phlx Rule 970, contains floor procedure advices with accompanying file schedules. Exchange Act Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for

a first violation will be subject to a written warning. Subsequent violations will be referred to the Business Conduct Committee.

III. Discussion

After careful review, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with Sections 6(b)(5) and 11A(a)(1)(C)(iii) and (iv) of the Act. Section 6(b)(5) requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market and a national market system. With respect to Section 11A, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market.[7] The proposed rule change will assure the availability of information with respect to quotations because it requires specialists to provide enhanced information regarding orders to the market by revising Advice A–1 to correspond to Exchange Act Rule 11Ac1–4.

In addition, the Commission believes the proposal is consistent with Section 6(b)(5)[8] because the incorporation of the limit order display rule into the Exchange's own rules should enhance compliance with the rule, thereby improving member handling of customer limit orders.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (Phlx–98–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7090 Filed 3–22–99; 8:45 am]

BILLING CODE 8010–01–M

summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary action. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[7] 15 U.S.C. 78k–1(a)(1)(C)(iii) and (iv).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #2999]

Overseas Presence Advisory Panel (OPAP) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the Overseas Presence Advisory Panel on Thursday, April 29, 1999 at 9:00 a.m. at the U.S. Department of State. The panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in the face of new foreign policy priorities, a heightened security situation and extremely limited resources. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 522b[c][1], it has been determined that the meeting will be closed to the public. The agenda calls for discussion of classified and sensitive information relative to findings derived from travel to overseas Embassies and Consulates; this would include intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

For more information contact Peter Petrihos, Overseas Presence Advisory Panel, Department of State, Washington, DC 20520; phone: 202–647–6477.

Dated: March 15, 1999

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–7110 Filed 3–22–99; 8:45 am]

BILLING CODE 4710–35–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–152]

WTO Dispute Settlement Proceeding Regarding Sections 301–310 of the Trade Act of 1974, as Amended

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO''), by the European Communities (''EC''), to examine Title III, chapter 1 (sections 301–310) of the United States Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2411–2420). In this dispute, the EC alleges that sections 301–310 of the Trade Act are inconsistent with obligations of the United States under the Dispute Settlement Understanding (''DSU''), the Marrakesh Agreement establishing the WTO, and the General Agreement on Tariffs and Trade (''GATT 1994''). The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by April 10, 1999, to be assured of timely consideration by the USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Section 301–310 Dispute, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joanna McIntosh, Associate General Counsel, (202) 395–7203.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1), the USTR is providing notice that on February 2, 1999, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine whether sections 301–310 of the Trade Act are inconsistent with the WTO obligations of the United States. The WTO Dispute Settlement Body (''DSB'') considered the EC's first request for the establishment of a panel on February 17, 1999, and its second request on March 2, 1999; a panel was established at this meeting.

Major Issues Raised by the EC and Legal Basis of the Complaint

The EC claims that sections 301–310 of the Trade Act impose ''specific, strict time limits'' that require the United States to make ''unilateral determinations'' regarding WTO violations by other WTO members, as well as trade sanctions that are prescribed as a result of such violations. By making these determinations, the EC contends that the United States is acting inconsistently with the DSU and the

GATT 1994 in situations when, at the end of the time limits imposed by sections 301–310, the DSB has not yet made a determination that a WTO member has not complied with its WTO obligations, and has not yet authorized the suspension of concessions with regard to such non-compliance. Specifically, the EC alleges that the U.S. legislation is inconsistent with the obligations of the United States under Articles 3, 21, 22, and 23 of the DSU; Article XVI:4 of the Marrakesh Agreement establishing the WTO; and Articles I, II, III, VIII, and XI of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commentator. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–152, Sections 301–310 Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Amelia Porges,

Senior Counsel for Dispute Settlement.

[FR Doc. 99–7080 Filed 3–22–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Summit County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed transportation improvements on SH 9 from Frisco to Breckenridge in Summit County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Sands, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone: 303/969–6730 extension 362.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation (CDOT), will prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transportation improvements on SH 9 from Frisco to Breckenridge in Summit County, Colorado. The EIS will evaluate the No-action and Build alternative(s) on SH 9 study limit from I–70 to River Park Drive south of Breckenridge, and determine the estimated costs and potential impacts associated with each. CDOT will be the local lead agency for the preparation of the EIS. The project is approximately ten miles in length and alternatives which may be evaluated included TSM (Transportation System Management), various four lane roadway typical sections and transit alternatives. Scoping has begun within the Environmental Assessment first initiated for this project. A public scoping meeting was held in Frisco, Colorado on November 5, 1998. Scoping meetings have also been conducted with the U.S. Army Corps of Engineers, U.S. Forest Service, Environmental Protection Agency, Colorado Division of Wildlife, Frisco City Council, Breckenridge City Council, Summit County Commissioners as well as interested citizens, property owners, business owners and others. Scoping will be continued through coordination with affected parties, organizations, federal, state and local agencies with future public and one-on-one meetings which will be held throughout the life of the project.

Written comments on project scope should be sent to: Ms. Lisa Kassels, Planning and Environmental Project Manager, CDOT Region 1, 18500 East Colfax Avenue, Aurora, CO 80011, Telephone: 303/757–9156.

FHWA, CDOT and other local agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. Information describing the purpose of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be available. These scoping materials may be requested contacting Ms. Lisa Kassels at the address and phone number above. Scoping comments may be made verbally at future public meetings or in writing. The public will receive notices on location and time of future meetings through newspaper advertisements and individual correspondence.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. if you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Lisa Kassels.

All significant social, economic, and environmental impacts of the alternatives carried forward for further study (e.g., the No-action alternative, a TSM alternative, a Build alternative) will be evaluated. Depending upon the alternatives under study, environmental and social impacts to be evaluated may include safety and mobility impacts, traffic and parking impacts if stations are proposed, visual impacts, impacts on cultural and paleontological resources, and noise impacts. Impacts on natural areas, threatened and endangered species, and water quality

will also be covered. Depending upon the alternative which surfaces as the preferred and the associated impacts of that alternative, construction-related impacts may need to be evaluated, and mitigation of any significant adverse impacts would be developed.

In accordance with FHWA policy, the Draft EIS will be prepared with required engineering design studies necessary to complete the document. After its publication, the Draft EIS will be available for public and agency review and comments, and a public hearing will be held. On the basis of the Draft EIS and the comments received, a preferred alternative will be selected and preparation of the Final EIS and Record of Decision will proceed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued: March 4, 1999.

Ronald A. Speral,

Environmental/ROW Program Manager, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 99–7026 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Blue Grass Railroad Museum, Incorporated

[Docket Number FRA–1999–5026]

The Blue Grass Railroad Museum, Incorporated, (BRMI) seeks a permanent waiver of compliance from certain provisions of the *Safety Glazing Standards*, 49 CFR 223.11, 223.13, and 223.15, that requires certified glazing, for three locomotives, one caboose, and four passenger cars. The BRMI is located in Versailles, Kentucky. The BRMI states they operate tourist excursions over 5.5 miles of track at a speed not to exceed 10 mph. They also state that all equipment is equipped with shatter proof glass that does not meet the Federal Glazing Standards.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5026) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7051 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Indiana Harbor Belt Railroad Company

[Docket Number FRA–1998–4615]

The Indiana Harbor Belt Railroad Company (IHB) seeks an extension of one year for waiver of compliance (H–97–5) from 49 CFR 229.131, Railroad Locomotive Safety Standards, Cabs and Cab Equipment—Sanders. Section 229.131 states: ''Except for MU locomotives, each locomotive shall be equipped with operable sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement.'' IHB would like to continue to operate one switching locomotive as part of the test of a new technology adhesion device. If approved the test period would be continued for one year beyond the date originally approved. The IHB reports the test locomotive has been confined to yard switching service and is monitored daily. To date the IHB reports they have not experienced any problems with the device.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1998–4615) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7049 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Oil Creek & Titusville Lines

[Docket Number FRA–1998–4822]

The Oil Creek & Titusville Lines railroad (OCTL) seeks a permanent waiver of compliance with the *Safety Glazing Standards,* 49 CFR 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The OCTL seeks this waiver for locomotive number OCTL 6758 and OCTL 6764. The owner states the locomotives operate over 41.7 miles of track through rural countryside. The OCTL states they average one or two round trips per week and that there has never been a glazing related accident.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1998–4822) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7050 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroad have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1998–4762.

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation Incorporated seeks approval of the proposed reduction of the traffic control system (TCS) limits, on the single main track, near W. Peach Creek, West Virginia, Logan Subdivision, C&O Business Unit, consisting of the discontinuance and removal of absolute controlled signals 8L and 8R, removal of the TCS between milepost CLS–61.3 and milepost CLS–63.4, and govern train operations by Yard Limit Rule 93.

The reason given for the proposed changes is to increase operating efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7042 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1998–4763.

Applicants: CSX Transportation, Incorporated.

Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

Norfolk Southern Corporation, Mr. W. C. Johnson, Chief Engineer S&E Engineering, 99 Spring Street, SW, Atlanta, Georgia 30303

SOO Line Railroad, Mr. J. C. Thomas, Manager C&S Services, Canadian Pacific Railway, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440

CSX Transportation Incorporated (CSX), Norfolk Southern Corporation (NS), and SOO Line Railroad, jointly

seek approval of the proposed modification of the traffic control system, near New Albany, Indiana, between milepost Q–316.1 and milepost Q–317.7, on the CSX Hoosier Subdivision, Louisville Service Lane, and between milepost 267.6W and milepost 268.9W on the NS St. Louis District, Kentucky Division, Western Region, consisting of the discontinuance and removal of absolute controlled signals 5R, 5LA, 5LC, 9R, and 9L.

The reason given for the proposed changes is that present day traffic does not warrant retention of the signals.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7043 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1998–4923.

Applicant: CSX Transportation, Incorporated Mr. R. M. Kadlick, Chief Engineer Train Control 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated (CSXT) seeks approval of the proposed modification of the traffic control system, on the two main tracks, at North Wilson, North Carolina, milepost A–134.9, on the South End Subdivision, Florence Service Lane, consisting of the discontinuance and removal of controlled absolute signals 26R, 26L, 28R, and 28L.

The reason given for the proposed changes is to improve operations and increase efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are availabe for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at http://dms.dot.gov. FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7045 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroad have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1998–4924.

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation Incorporated seeks approval of the proposed modification of the signal system, at UN Control Point, milepost BG–55.6, on the New Castle Subdivision, Cumberland Division, near New Castle, Pennsylvania, consisting of the discontinuance and removal of the No. 7 power-operated derail.

The reason given for the proposed changes is that the power-operated derail is no longer needed in current day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401,

Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7046 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1998–4925.

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated (CSXT) seeks approval of the proposed discontinuance and removal of the traffic control and automatic block signal systems, on the two main tracks between milepost BAV–0.0, Hagerstown, Maryland, and milepost BAV–32.2, Lurgan, Pennsylvania, on the Lurgan Subdivision, Baltimore Division, a distance of approximately 32.2 miles, and operate under CSXT Operating Rules 105 and 46.

The reason given for the proposed changes is that a publicly funded project designed to eliminate several highway-rail grade crossings in Chambersburg, Pennsylvania, will cause all but a small portion of the involved CSXT traffic to be re-routed over a roughly parallel Conrail Line. The minimum remaining rail traffic on the CSXT line will no longer warrant operation of a wayside signal system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7047 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1998–4761.

Applicant: Delray Connecting Railroad Company Mr. Harold Sebastian, General Manager, P.O. Box 32538, Detroit, Michigan 48232.

The Delray Connecting Railroad Company seeks approval of the proposed modification of Short Cut Bridge Interlocking, near Detroit, Michigan, consisting of the discontinuance and removal of the No. 1 power-operated derail, and relocation of the No. 9 power-operated derail to a new position 266.5 feet south of Shortcut Bridge, associated with combining the provided protection into one derail.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the

docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7041 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1998–4821.

Applicant: Duluth, Missabe and Iron Range Railway Company, Mr. D. B. Moore, Chief Engineer, Engineering Department, 329 Second Street, Proctor, Minnesota 55810–1091.

The Duluth, Missabe and Iron Range Railway Company (DMIR) seeks relief from the requirements of § 236.51 of the Rules, Standards, and Instructions (49 CFR 236.51), to the extent that DMIR be permitted to utilize wheel count-based trap circuits, on steel deck bridges in signaled territory, in lieu of maintaining the existing track circuits.

Applicant's justification for relief: The insulated bridge pads are approaching the end of their useful life, and replacement pads are only available from an Australian supplier in large quantities, at high cost; the steadily increasing annual cost for maintenance and train delays associated with troubleshooting and repairs, make it impracticable to maintain the existing track circuits; and presently, rail size is limited to 115-pound and cannot be upgraded to DMIR's 136-pound, main line track standard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7044 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1998–4926.

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signal/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed modification of the signal system, on the main track and siding, between W.E. Irving, milepost 652.2 and E. E. Irving, milepost 653.3, on the Brooklyn Subdivision, near Eugene, Oregon. The proposal includes the discontinuance and removal of controlled signals 12LA, 12LB, and 12R at W. E. Irving; reduction of the traffic control system limits by approximately 1,700 feet; and the associated extension of the automatic block signal system eastward approximately 1,700 feet to E. E. Irving.

The reason given for the proposed changes is that there is no longer a need for the controlled signals at W. E. Irving because the switch has been permanently removed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 17, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–7048 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; NISSAN

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Nissan North America, Inc. (Nissan) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the Federal motor vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. Nissan requested confidential treatment for its information and attachments submitted in support of its petition. In a letter to Nissan dated February 12, 1999, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington DC 20590. Ms. Proctor's phone number is (202) 366–4807. Her fax number is (202) 366–2739.

SUPPLEMENTARY INFORMATION: In a petition dated November 25, 1998, Nissan North America, Inc. (Nissan), requested exemption from the parts-marking requirements of the theft prevention standard for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The petition requested an exemption from parts marking pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Nissan's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Nissan requested confidential treatment for the information submitted in support of its petition. In a letter dated February 12, 1999, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine-immobilizer system. The antitheft device is activated by turning the ignition switch to the ''OFF'' position using the proper ignition key.

In order to ensure the reliability and durability of the device, Nissan conducted tests based on its own specified standards. Nissan provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test.

Nissan compared the device proposed for its vehicle line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Nissan stated that its proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lack an audible and visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR 542.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Nissan proposes. In these instances, the agency has concluded that the lack of a visual or audible alarm has not prevented these antitheft devices from being effective protection against theft.

On the basis of this comparison, Nissan has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the Nissan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Nissan for the anti-theft device and its components.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. Advanced listing, including the release of future product nameplates, is necessary in order to notify law enforcement agencies of new models exempted from the parts-marking requirements of the Theft Prevention Standard. Therefore, since Nissan has been granted confidential treatment for its vehicle line, the confidential status of the vehicle line will be protected until the introduction of its vehicle line into the market place. At that time, Appendix A–1 will be revised to reflect the nameplate of Nissan's exempted vehicle line.

If Nissan decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing

from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 16, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–6969 Filed 3–22–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 205X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Dickenson, Russell and Buchanan Counties, VA

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 6.26-mile line of railroad between milepost C–7.3 at Wilder and milepost C–13.56 at Duty, and a 1.8-mile line of railroad between milepost TS–0.0 at Tiller Spur Junction (CDX) and milepost TS–1.8 at Tiller, a total distance of 8.06 miles, in Dickenson, Russell and Buchanan Counties, VA. The line traverses United States Postal Service Zip Codes 24217, 24260 and 24066.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 22, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 2, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 12, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 26, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NS's filing of a notice of consummation by March 23, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: March 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–6920 Filed 3–22–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Air Waybill

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Use of Air Waybill as In-Bond Document. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before May 24, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Use of Air Waybill as In-Bond Document

OMB Number: 1515–0186

Form Number: CF 7512

Abstract: This information collection is used by Customs to identify the delivering carrier , whether or not it is the initial bonded carrier, to surrender the in-bond document and serve notice of it's arrival.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 31,200.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 1,030.

Estimated Annualized Cost to the Public: $10,300.

Dated: March 16, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–7101 Filed 3–22–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed collection; comment request; Certificate of Origin

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 24, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Certificate of Origin.

OMB Number: 1515–0055.

Form Number: Customs Form 3229.

Abstract: This certification is required to determine whether an importer is entitled to duty-free for goods which are the growth or product of a U.S. insular possession and which contain foreign materials representing no more than 70 percent of the goods total value.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 113.

Estimated Total Annualized Cost on the Public: $1,030.

Dated: March 17, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–7102 Filed 3–22–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Petition for Remission or Mitigation

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Petition for Remission or Mitigation. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before May 24, 1999 to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Petition for Remission or Mitigation.

OMB Number: 1515–0052.

Form Number: Customs Form 4609.

Abstract: Persons who's property is seized or who incur monetary penalties due to violations of the Tariff Act are entitled to seek remission or mitigation by means of an informal appeal. This form gives the violator the opportunity to claim mitigation and provides a record of such administrative appeals.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 28,000.

Estimated Time Per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 8,834.

Estimated Annualized Cost to the Public: N/A.

Dated: March 17, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–7103 Filed 3–22–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry and Manifest of Merchandise Free of Duty

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Manifest of Merchandise Free of Duty. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 24, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry and Manifest of Merchandise Free of Duty.

OMB Number: 1515–0051.

Form Number: Customs Form 7523.

Abstract: Customs Form 7523 is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain condition and by Customs to authorize the entry of such merchandise. It is also used by carriers to show that the articles being imported are to be released to the importer or consignee.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 4,950.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 8,247.

Estimated Total Annualized Cost on the Public: $123,700.

Dated: March 17, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–7104 Filed 3–22–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Inward Cargo Manifest for Vessels

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Inward Cargo Manifest for Vessels. This request for comment is being made pursuant to

the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before May 24, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Inward Cargo Manifest for Vessels.

OMB Number: 1515–0049.

Form Number: Customs Form 7533.

Abstract: Vessels under five tons and any vehicle carrying merchandise and arriving from contiguous country must report their arrival in the U.S. and produce a manifest on Customs Form 7533 listing merchandise being conveyed.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 41,650.

Estimated Annualized Cost to the Public: $499,800.

Dated: March 17, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–7105 Filed 3–22–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application for Identification Card

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Identification Card. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 24, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Identification Card.

OMB Number: 1515–0026.

Form Number: Customs Form 3078.

Abstract: Customs Form 3078 is used by licensed Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to Customs secure areas to apply for an identification card so that they may legally handle merchandise which is in Customs custody.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 7,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5,250.

Estimated Total Annualized Cost on the Public: $63,000.

Dated: March 17, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–7106 Filed 3–22–99; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Comment Request; Proposed New Collection: USIA Grantee/Customer Survey

SUMMARY: The United States Information Agency, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the proposed public use form entitled, ''USIA Grantee Customer.'' This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)]. Comments are requested on the proposed information collection concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/AOL, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

DATE: Comments are due on or before May 24, 1999.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–4408, internet address: JGiovett@USIA.GOV; and OMB review: Mr. Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Education and Cultural Exchange Act of 1961, Public Law 87–256, 22 U.S.C. 2451. Public reporting burden for this collection of information is estimated to average ten (10) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary but respondents are requested to respond one time.

Current action(s): As this is a one-time survey, USIA is requesting OMB approval of this new collection through December 1999.

Title: USIA Grantee/Customer Survey.

Form Number(s): N/A.

Abstract: In support of the Government Performance and Results Act (GPRA) of 1993, USIA's Grants Office proposes to conduct a one-time survey to streamline the grants-making process to consistently identify ways to effectively and efficiently execute grant awards and to enhance the quality of service to our customers in developing future workshops.

Proposed Frequency of Responses:

No. of Respondents—800.

Recordkeeping Hours—.10.

Total Annual Burden—80.

Dated: March 18, 1999.

Rose Royal,

Federal Register Liaison.

[FR Doc. 99–7037 Filed 3–22–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Tuesday
March 23, 1999

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 217, et al.

Endangered and Threatened Species: Regulations Consolidation; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 217, 220, 221, 222, 223, 224, 225, 226, 227, 648, 679, and 697

[Docket No. 980113011–9049–02; I.D. 061896A]

RIN 0648–AK34

Endangered and Threatened Species; Regulations Consolidation

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

ACTION: Final rule.

SUMMARY: This final rule consolidates and reorganizes existing regulations regarding implementation of the Endangered Species Act (Act) by NMFS. The action is part of the President's Regulatory Reinvention Initiative (RRI).

DATES: Effective March 23, 1999, except that §§ 222.205(c)(1) and (2), 222.305(a), 223.206(d)(5), 223.207(a)(9)(ii)(A) and (B) will not become effective until the Office of Management and Budget (OMB) approves the information collection requirements contained in those sections. NMFS will publish a document in the **Federal Register** announcing the effective date for those sections.

ADDRESSES: Kevin Collins, Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Therese Conant, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, Phone: (301) 713–1401.

SUPPLEMENTARY INFORMATION: NMFS is responsible for implementing the Act (16 U.S.C. 1531 *et seq.*) with respect to most marine species. Regulations implemented by NMFS are currently codified at 50 CFR parts 217 through 227. These regulations outline agency procedures and provide program administration information to other government agencies, interested groups, and individuals. To improve regulations under the President's RRI, NMFS is recodifying its Act regulations into three basic sections:

Revised part 222 deals with general provisions of the Act, including purpose, definitions, and other miscellaneous issues (subpart A), certificates of exemption (subpart B), and permits (subpart C). Revised part 223 deals exclusively with threatened species. Revised part 224 deals exclusively with endangered species. Revised part 226 identifies critical habitat designated by the Secretary of Commerce. The consolidated text is reorganized into a more logical and cohesive order; duplicative and outdated provisions are eliminated; and editorial changes are made for readability and clarity. This final rule makes no substantive changes to the existing regulations. The purpose of this rule is to make the regulations more concise, better organized, and therefore easier for the public to use.

Specifically, regulations in part 217, concerning general provisions of the Act, purpose and scope of the regulations, definitions, and addresses, have been consolidated and are now codified in part 222, subpart A. Definitions in the new § 222.102 have been consolidated from definitions previously found in parts 217, 225, and 227, and all addresses have been updated and included in the definitions. Definitions for ''Skimmer trawl'', ''Wing net'', ''Pusher-head trawl'', ''Summer flounder protection area'', and ''Leatherback conservation zone'' have been revised, and definitions for ''Beam trawl'' and ''Roller trawl'' have been added for clarity. In addition, several terms are being deleted from the definitions because they are no longer pertinent or because they are self-evident. Such terms include ''North Carolina restricted area'', ''Ongoing project(s)'', ''Country of origin'', ''Country of exportation'', ''Sea turtles(s)'', ''United States'', ''Whoever'', ''Wildlife'', ''Soft TED'', ''Hard TED'', ''Length'', and ''Plastron.''

Regulations in part 221, concerning designated ports of entry for species listed in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, are now codified in § 222.205(a).

Several components of part 225, concerning Federal/state cooperation in the conservation of endangered and threatened species, are being eliminated under the RRI, because they do not provide further guidance or detail over the language contained in section 6 of the Act. The remaining portions of part 225, concerning applications and program evaluation procedures, are being recodified in § 222.104. These provisions have been clarified so that it is clear that NMFS may enter into a Cooperative Agreement with a state pursuant to either sections 6(c)(1)(A) through (E) or sections 6(c)(1)(i) and (ii) of the Act.

Provisions relating to Certifications of Exemption for pre-Act endangered species part permits have been streamlined and recodified in subpart B of part 222. In addition, technical changes were made to the existing provisions to make them consistent with the current provisions of section 10 of the Act. Specifically, in 1988, Congress amended section 10(f) to allow for one renewal of a Certificate of Exemption that was renewed after October 13, 1982, and was in effect on March 31, 1988. Congress again amended section 10(f) to provide that any valid Certificate of Exemption for pre-ESA scrimshaw products or raw material for such products shall remain valid for up to a 5-year period beginning April 30, 1994. These legislative amendments are now reflected in new § 222.202(a)(1) and (2).

Regulations in parts 217 and 220, concerning general permit procedures, have been greatly streamlined and are now codified in subpart C of part 222. Previously, general provisions relating to permits were found in part 217, while specific procedures for permits to take endangered species were found in part 220. Regulations relating to permits to take threatened species previously found in part 227 referred to the provisions in parts 220 and 222. These cross-references resulted in redundancy and some confusion in applicable regulations. New subpart C of part 222 contains provisions relating to all types of permits for endangered and threatened species for which section 9 of the Act applies. General requirements for permits have been streamlined and are provided in §§ 222.301 through 222.306. Specific requirements for incidental take permits are now found in § 222.307, and requirements for research and enhancement permits are now found in § 222.208.

In addition, the existing regulations had several inconsistencies that have been addressed where appropriate. For example, § 220.11 required a permit application to be submitted 90 days prior to the effective date, and § 222.23(b) recommended 45 days. The new regulations change the 45 day requirement to 90 days to be consistent with the general permit requirements.

Part 224 contains provisions relating to endangered species, including special prohibitions. While part 223 contains regulations relating to threatened species, including specified prohibitions and exceptions to those prohibitions. The text has been reorganized into a more logical and cohesive order; duplicative and outdated provisions have been

eliminated; and editorial changes have been made for readability and clarity.

Regulations found in § 227.72 are now under two sections, §§ 223.206 and 223.207, and covers exceptions against prohibitions relating to threatened species of sea turtles and technical requirements for turtle excluder devices. Minor changes to these regulations have been made to improve organization and readability. The following sections of text have been eliminated because the provisions are no longer applicable: 50 CFR 227.72(e)(3)(ii)(B) relating to the North Carolina restricted area for sea turtles; 50 CFR 227.72(f) relating to provisions relevant to the U.S. Trust Territories in the Pacific, and 50 CFR 227.72(a)(2) relating to ongoing research within 90 days of when species of turtles were listed as threatened. In addition, outdated provisions with sunset dates have been removed, and titles and addresses of NMFS offices have been updated.

Generally, the charts in part 226 depicting critical habitat areas are being removed under the RRI in order to reduce the volume of materials in the CFR. However, those charts providing clarification to descriptions will remain, such as the rookery site charts in part 227. Otherwise, these charts will continue to be available from the NMFS Office of Protected Resources upon request (see **ADDRESSES**). The tables and text containing specific boundaries of such areas will continue to appear in 50 CFR part 226. NMFS is amending the table in 15 CFR part 902 to update OMB control numbers for compliance with the Paperwork Reduction Act.

The following derivation table identifies the new parts and sections with corresponding sections of the existing regulations. This chart is intended to demonstrate the relationship of existing sections to new sections and to facilitate the public's understanding of the revisions. Several sections have been removed and are not identified in the chart. The removed sections or paragraphs are 222.1, 222.2, 222.11–9, 222.34, 225.2, 225.10, 225.11, 225.12, 225.13, 225.14, 227.72(a)(2) and 227.72(f).

New section	Old section
222.101(a)	217.1, 217.2, 217.4, 227.1, 227.2(c)
222.101(b)	217.3
222.102 ...	217.12, 217.21, 217.22, 217.23, 222.3, 225.3, 227.3
222.103(a)	225.4, 225.5
222.103(b)	225.5, 225.6, 225.8
222.103(c)	225.7, 225.9
222.201(a)	222.11–1, 222.13–4
222.201(b)	
222.201(c)	222.11–8(a)
222.201(d)	222.11–8(b)
222.202 ...	222.11–2, 222.11–3, 222.11–4
222.203(a)	222.11–5
222.203(b)	222.11–6
222.203(c)	222.11–7
222.204(a)	222.12
222.204(b)	222.12–1
222.204(c)	222.12–2, 222.12–3, 222.12–4
222.204(d)	222.12–5
222.204(e)	222.12–6
222.204(f)	222.12–7
222.204(g)	222.12–8
222.205(a)	221.1
222.205(b)	222.12–9
222.205(c)	222.13, 222.13–1, 222.13–2, 222.13–3
222.301(a)	220.2, 220.3, 220.4
222.301(b)	220.22, 222.21
222.301(c)	220.1
222.301(d)	222.28
222.301(e)	220.42
222.301(f)	220.43
222.301(g)	220.44
222.301(h)	220.45
222.301(i)	220.46
222.301(j)	220.47
222.302(a)	220.11
222.302(b)	220.11
222.302(c)	220.13, 222.22, 222.23
222.303(a)	220.21(a)
222.303(b)	222.24(a)
222.303(c)	222.24(b)
222.303(d)	222.24(c)
222.303(e)	220.21(b)
222.303(f)	222.24(d)
222.303(g)	222.24(e)
222.304 ...	220.24
222.305(a)	220.25(a), 220.26
222.305(b)	220.25(b)
222.306(a)	222.25
222.306(b)	220.27, 220.28
222.306(c)	222.26
222.306(d)	220.31
222.306(e)	222.27
222.307 ...	222.22
222.308 ...	222.23
222.309 ...	220.50, 220.51, 220.52, 220.53
223.101 ...	227.1, 227.2(a), 227.2(b)
223.102 ...	227.4
223.201 ...	227.11
223.202 ...	227.12
223.203 ...	227.21
223.204 ...	227.22
223.205 ...	227.71
223.206 ...	227.72
223.207 ...	227.72(e)(4)
224.101 ...	222.23(a)
224.102 ...	222.21
224.103(a) through (c).	222.31, 222.32, 222.33
224.104 ...	222.41, 222.42
226.101 ...	226.1, 226.2
226.201 ...	226.11
226.202 ...	226.12
226.203 ...	226.13
226.204 ...	226.21
226.205 ...	226.22
226.206 ...	226.23
226.207 ...	226.71
226.208 ...	226.72
226.209 ...	226.73

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

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

The Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), finds for good cause to waive the requirement of a prior notice and an opportunity for public comment as such procedures are unnecessary. This rule does not make any substantive changes to existing regulations that, when issued, complied with notice-and-comment procedures. These changes are made solely to achieve greater clarity and organization and to eliminate provisions that are no longer necessary. Because this rule does not make any substantive changes to the existing regulations, it is not subject to the requirement in 5 U.S.C. 553(d) that its effective date be delayed.

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 220

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 221

Endangered and threatened species, Exports, Fish, Harbors, Imports, Marine mammals.

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 224

Administrative practices and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 225

Endangered and threatened species, Grant programs—natural resources, Intergovernmental relations.

50 CFR Part 226

Endangered and threatened species.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 697

Administrative practice and procedure, Fisheries, Fishing.

Dated: March 15, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

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

15 CFR, Chapter IX

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

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

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

2. In 15 CFR 902.1, in paragraph (b), the table is amended by removing, in the left column under 50 CFR, the entries ''222.11–2'', ''222.11–8'', ''222.12–7'', ''222.12–8'', ''222.22'', and ''227.72'', and, in the right column, the corresponding control numbers; and by adding, in numerical order, the following entries to read as follows:

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

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers requirement with 0648–)
* * * * *	
50 CFR	
* * * * *	
222.201(c) and (d)	–0079
222.202	–0078
222.204(f) and (g)	–0078
222.301(i)	–0084
222.307	–0230
222.308	–0084
223.206(a)	–0230
223.206(b) and (c)	–0178
223.207(e)	–0309
* * * * *	

50 CFR Chapter II

PARTS 217, 220, 221, and 225—[REMOVED AND RESERVED]

3. Under the authority of Endangered Species Act of 1973 sec. 11(f), 87 Stat. 884, Pub. L. 93–205; 16 U.S.C. 742a *et seq.*, 1361 *et seq.*, and 1531–1544, parts 217, 220, 221, and 225 are removed and reserved.

4. Part 222 is revised to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

Subpart A—Introduction and General Provisions

Sec.
222.101 Purpose and scope of regulations.
222.102 Definitions.
222.103 Federal/state cooperation in the conservation of endangered and threatened species.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

222.201 General requirements.
222.202 Certificate renewal.
222.203 Modification, amendment, suspension, and revocation of certificates.
222.204 Administration of certificates.
222.205 Import and export requirements.

Subpart C—General Permit Procedures

222.301 General requirements.
222.302 Procedure for obtaining permits.
222.303 Issuance of permits.
222.304 Renewal of permits.
222.305 Rights of succession and transfer of permits.
222.306 Modification, amendment, suspension, cancellation, and revocation of permits.
222.307 Permits for incidental taking of species.
222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.
222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

Section 222.403 also issued under 16 U.S.C. 1361 *et seq.*

Subpart A—Introduction and General Provisions

§ 222.101 Purpose and scope of regulations.

(a) The regulations of parts 222, 223, and 224 of this chapter implement the Endangered Species Act (Act), and govern the taking, possession, transportation, sale, purchase, barter, exportation, importation of, and other requirements pertaining to wildlife and plants under the jurisdiction of the Secretary of Commerce and determined to be threatened or endangered pursuant to section 4(a) of the Act. These regulations are implemented by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, This part pertains to general provisions and definitions. Specifically, parts 223 and 224 pertain to provisions to threatened species and endangered species, respectively. Part 226 enumerates designated critical habitat for endangered and threatened species. Certain of the endangered and threatened marine species enumerated in §§ 224.102 and 223.102 are included in Appendix I or II to the Convention on International Trade of Endangered Species of Wild Fauna and Flora. The importation, exportation, and re-exportation of such species are subject to additional regulations set forth at 50 CFR part 23, chapter I.

(b) For rules and procedures relating to species determined to be threatened or endangered under the jurisdiction of the Secretary of the Interior, see 50 CFR parts 10 through 17. For rules and procedures relating to the general implementation of the Act jointly by the Departments of the Interior and Commerce and for certain species under the joint jurisdiction of both the Secretaries of the Interior and Commerce, see 50 CFR Chapter IV. Marine mammals listed as endangered or threatened and subject to these regulations may also be subject to additional requirements pursuant to the Marine Mammal Protection Act (for

regulations implementing that act, see 50 CFR part 216).

(c) No statute or regulation of any state shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 222, 223, and 224 of this chapter. In addition, nothing in parts 222, 223, and 224 of this chapter, including any permit issued pursuant thereto, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any state or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or any other National Marine Fisheries Service enforced statutes or regulations.

§ 222.102 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.

Act means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Alaska Regional Administrator means the Regional Administrator for the Alaska Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Alaska Regional Administrator should be addressed: Alaska Regional Administrator, F/AK, Alaska Regional Office, National Marine Fisheries Service, NOAA, P.O. Box 21668 Juneau, AK 99802–1668.

Approved turtle excluder device (TED) means a device designed to be installed in a trawl net forward of the cod end for the purpose of excluding sea turtles from the net, as described in 50 CFR 223.207.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his authorized representative. Mail sent to the Assistant Administrator should be addressed: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

Atlantic Area means all waters of the Atlantic Ocean south of 36°33′00.8″ N. lat. (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Atlantic Shrimp Fishery—Sea Turtle Conservation Area (Atlantic SFSTCA) means the inshore and offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Georgia and South Carolina from the Georgia-Florida border (defined as the line along 30°42′45.6″ N. lat.) to the North Carolina-South Carolina border (defined as the line extending in a direction of 135°34′55″ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 078°32′32.6″ W. long.).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

Beam trawl means a trawl with a rigid frame surrounding the mouth that is towed from a vessel by means of one or more cables or ropes.

Certificate of exemption means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any certificate of exemption.

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Commercial activity means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, that it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

Conservation plan means the plan required by section 10(a)(2)(A) of the Act that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as ''habitat conservation plans'' or ''HCPs.''

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Cooperative Agreement means an agreement between a state(s) and the National Marine Fisheries Service, NOAA, Department of Commerce, which establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened pursuant to section 6(c)(1) of the Endangered Species Act.

Fishing, or *to fish*, means:

(1) The catching, taking, or harvesting of fish or wildlife;

(2) The attempted catching, taking, or harvesting of fish or wildlife;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or

(4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forward most webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forward-most webbing.

Foreign commerce includes, among other things, any transaction between persons within one foreign country, or between persons in two or more foreign countries, or between a person within the United States and a person in one or more foreign countries, or between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

Four-seam, straight-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of

webbing are parallel over the entire length.

Four-seam, tapered-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing converge toward the rear of the trawl.

Gulf Area means all waters of the Gulf of Mexico west of 81° W. long. (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA) means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°08.5′ W. long.) to the U.S.-Mexican border.

Habitat restoration activity means an activity that has the sole objective of restoring natural aquatic or riparian habitat conditions or processes.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forward-most webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forward-most webbing.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

Inshore means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Leatherback conservation zone means that portion of the Atlantic Area lying north of a line along 28°24.6′ N. lat. (Cape Canaveral, FL).

Northeast Regional Administrator means the Regional Administrator for the Northeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northeast Regional Administrator should be addressed: Northeast Regional Administrator, F/NE, Northeast Regional Office, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.

Northwest Regional Administrator means the Regional Administrator for the Northwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northwest Regional Administrator should be addressed: Northwest Regional Administrator, F/NW, Northwest Regional Office, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Office of Enforcement means the national fisheries enforcement office of the National Marine Fisheries Service. Mail sent to the Office of Enforcement should be addressed: Office of Enforcement, F/EN, National Marine Fisheries Service, NOAA, 8484 Suite 415, Georgia Ave., Silver Spring, MD 20910.

Office of Protected Resources means the national program office of the endangered species and marine mammal programs of the National Marine Fisheries Service. Mail sent to the Office of Protected Resources should be addressed: Office of Protected Resources, F/PR, National Marine Fisheries Service, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

Offshore means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a Conservation Plan or its Implementing Agreement. These activities are to be undertaken for the affected species when implementing an approved Conservation Plan, including measures to respond to changed circumstances.

Permit means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends, or renews any permit.

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal government of any state or political subdivision thereof or of any foreign government.

Possession means the detention and control, or the manual or ideal custody of anything that may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which persons can exercise their power over a corporeal thing at their pleasure to the exclusion of all other persons. Possession includes constructive possession that which means not an actual but an assumed existence one claims to hold by virtue of some title, without having actual custody.

Pre-Act endangered species part means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Properly implemented conservation plan means any conservation plan, implementing agreement, or permit whose commitments and provisions have been or are being fully implemented by the permittee.

Pusher-head trawl (chopsticks) means a trawl that is spread by two poles suspended from the bow of the trawler in an inverted ''V'' configuration.

Resident species means, for purposes of entering into cooperative agreements with any state pursuant to section 6(c) of the Act, a species that exists in the wild in that state during any part of its life.

Right whale means, as used in part 224 of this chapter, any whale that is a member of the western North Atlantic population of the northern right whale species (*Eubalaena glacialis*).

Roller trawl means a variety of beam trawl that is used, usually by small vessels, for fishing over uneven or vegetated sea bottoms.

Scrimshaw product means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute

substantial etching, engraving, or carving.

Secretary means the Secretary of Commerce or an authorized representative.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

(1) Brown shrimp (*Penaeus aztecus*).

(2) White shrimp (*Penaeus setiferus*).

(3) Pink shrimp (*Penaeus duorarum*).

(4) Rock shrimp (*Sicyonia brevirostris*).

(5) Royal red shrimp (*Hymenopenaeus robustus*).

(6) Seabob shrimp (*Xiphopenaeus kroyeri*).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that is fished along the side of the vessel and is held open by a rigid frame and a lead weight. On its outboard side, the trawl is held open by one side of the frame extending downward and, on its inboard side, by a lead weight attached by cable or rope to the bow of the vessel.

Southeast Regional Administrator means the Regional Administrator for the Southeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southeast Regional Administrator should be addressed: Southeast Regional Administrator, F/SE, Southeast Regional Office, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432.

Southwest Regional Administrator means the Regional Administrator for the Southwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southwest Regional Administrator should be addressed: Southwest Regional Administrator, F/SW, Southwest Regional Office, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

Summer flounder means the species *Paralichthys dentatus*.

Summer flounder fishery-sea turtle protection area means all offshore waters, bounded on the north by a line along 37°05′ N. lat. (Cape Charles, VA) and bounded on the south by a line extending in a direction of 135°34′55″ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 078°32′32.6″ W. long.(the North Carolina-South Carolina border).

Summer flounder trawler means any vessel that is equipped with one or more bottom trawl nets and that is capable of, or used for, fishing for flounder or whose on-board or landed catch of flounder is more than 100 lb (45.4 kg).

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Taper, in reference to the webbing used in trawls, means the angle of a cut used to shape the webbing, expressed as the ratio between the cuts that reduce the width of the webbing by cutting into the panel of webbing through one row of twine (bar cuts) and the cuts that extend the length of the panel of webbing by cutting straight aft through two adjoining rows of twine (point cuts). For example, sequentially cutting through the lengths of twine on opposite sides of a mesh, leaving an uncut edge of twines all lying in the same line, produces a relatively strong taper called ''all-bars''; making a sequence of 4-bar cuts followed by 1-point cut produces a more gradual taper called ''4 bars to 1 point'' or ''4b1p''; similarly, making a sequence of 2-bar cuts followed by 1-point cut produces a still more gradual taper called ''2b1p''; and making a sequence of cuts straight aft does not reduce the width of the panel and is called a ''straight'' or ''all-points'' cut.

Taut means a condition in which there is no slack in the net webbing.

Test net, or *try net,* means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

Tongue means any piece of webbing along the top, center, leading edge of a trawl, whether lying behind or ahead of the headrope, to which a towing bridle can be attached for purposes of pulling the trawl net and/or adjusting the shape of the trawl.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Triple-wing trawl means a trawl with a tongue on the top, center, leading edge of the trawl and an additional tongue along the bottom, center, leading edge of the trawl.

Two-seam trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top and a bottom panel of webbing that are directly attached to each other down the sides of the trawl.

Underway with respect to a vessel, means that the vessel is not at anchor, or made fast to the shore, or aground.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

Vessel means a vehicle used, or capable of being used, as a means of transportation on water which includes every description of watercraft, including nondisplacement craft and seaplanes.

Vessel restricted in her ability to maneuver has the meaning specified for this term at 33 U.S.C. 2003(g).

Wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Wing net (butterfly trawl) means a trawl that is fished along the side of the vessel and that is held open by a four-sided, rigid frame attached to the outrigger of the vessel.

§ 222.103 Federal/state cooperation in the conservation of endangered and threatened species.

(a) *Application for and renewal of cooperative agreements.* (1) The Assistant Administrator may enter into a Cooperative Agreement with any state that establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened. In order for a state program to be deemed an adequate and active program, the Assistant Administrator must find, and annually reconfirm that the criteria of either sections 6(c)(1) (A) through (E) or

sections 6(c)(1) (i) and (ii) of the Act have been satisfied.

(2) Following receipt of an application by a state for a Cooperative Agreement with a copy of a proposed state program, and a determination by the Assistant Administrator that the state program is adequate and active, the Assistant Administrator shall enter into an Agreement with the state.

(3) The Cooperative Agreement, as well as the Assistant Administrator's finding upon which it is based, must be reconfirmed annually to ensure that it reflects new laws, species lists, rules or regulations, and programs and to demonstrate that it is still adequate and active.

(b) *Allocation and availability of funds.* (1) The Assistant Administrator shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various states using the following as the basis for the determination:

(i) The international commitments of the United States to protect endangered or threatened species;

(ii) The readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the Act;

(iii) The number of federally listed endangered and threatened species within a state;

(iv) The potential for restoring endangered and threatened species within a state; and

(v) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

(2) Funds allocated to a state are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. Obligation of allocated funds occurs when an award or contract is signed by the Assistant Administrator.

(c) *Financial assistance and payments.* (1) A state must enter into a Cooperative Agreement before financial assistance is approved by the Assistant Administrator for endangered or threatened species projects. Specifically, the Agreement must contain the actions that are to be taken by the Assistant Administrator and/or by the state, the benefits to listed species expected to be derived from these actions, and the estimated cost of these actions.

(2) Subsequent to such Agreement, the Assistant Administrator may further agree with a state to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an application for Federal assistance and an award or a contract. The availability of Federal funds shall be contingent upon the continued existence of the Cooperative Agreement and compliance with all applicable Federal regulations for grant administration and cost accounting principles.

(3)(i) The payment of the Federal share of costs incurred when conducting activities included under a contract or award shall not exceed 75 percent of the program costs as stated in the agreement. However, the Federal share may be increased to 90 percent when two or more states having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such states, jointly enter into an agreement with the Assistant Administrator.

(ii) The state share of program costs may be in the form of cash or in-kind contributions, including real property, subject to applicable Federal regulations.

(4) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all necessary or required documents are first submitted to and approved by the Assistant Administrator. Payments shall only be made for expenditures reported and certified by the state agency. Payments shall be made only to the state office or official designated by the state agency and authorized under the laws of the state to receive public funds for the state.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

§ 222.201 General requirements.

(a) The Assistant Administrator may exempt any pre-Act endangered species part from the prohibitions of sections 9(a)(1)(A), 9(a)(1)(E), or 9(a)(1)(F) of the Act.

(1) No person shall engage in any activities identified in such sections of the Act that involve any pre-Act endangered species part without a valid Certificate of Exemption issued pursuant to this subpart B.

(2) No person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid Certificate of Exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

(3) Any person engaged in activities otherwise prohibited under the Act or regulations shall bear the burden of proving that the exemption or certificate is applicable, was granted, and was valid and in force at the time of the otherwise prohibited activity.

(b) Certificates of Exemption issued under this subpart are no longer available to new applicants. However, the Assistant Administrator may renew or modify existing Certificates of Exemptions as authorized by the provisions set forth in this subpart.

(c) Any person granted a Certificate of Exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(d) Any purchaser of pre-Act endangered species parts included in a valid Certificate of Exemption, unless an ultimate user, within 30 days after the receipt of such parts, must submit a written report to the address given in the certificate. The report must specify the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. The term ''ultimate user'', for purposes of this paragraph, means any person who acquired such endangered species part or product for his or her own consumption or for other personal use (including gifts) and not for resale.

§ 222.202 Certificate renewal.

(a) Any person to whom a Certificate of Exemption has been issued by the National Marine Fisheries Service may apply to the Assistant Administrator for renewal of such certificate. Any person holding a valid Certificate of Exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, may apply to the Secretary for one renewal for a period not to exceed 5 years.

(b) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of paragraph (c) of this section. At least 15 days should be

allowed for processing. When an application for a renewal has been received and deemed sufficient, the Assistant Administrator shall issue a Certificate of Renewal to the applicant as soon as practicable.

(c) The following information will be used as the basis for determining whether an application for renewal of a Certificate of Exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption.

(2) The date of application.

(3) The identity of the applicant, including complete name, original Certificate of Exemption number, current address, and telephone number. If the applicant is a corporation, partnership, or association, set forth the details.

(4) The period of time for which a renewal of the Certificate of Exemption is requested. However, no renewal of Certificate of Exemption, or right claimed thereunder, shall be effective after the close of the 5-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: A unique serial number; the weight of the item to the nearest whole gram; and a detailed description sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00–000000–0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. The number must remain affixed to the item until the item is sold to an ultimate user, as defined in § 222.201(d).

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a Certificate of Exemption.

(6) A Certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my Certificate of Exemption under the Endangered Species Act, as amended, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Act.

(7) Signature of the applicant.

(d) Upon receipt of an incomplete or improperly executed application for renewal, the applicant shall be notified of the deficiency in the application for renewal. If the application for renewal is not corrected and received by the Assistant Administrator within 30 days following the date of receipt of notification, the application for renewal shall be considered abandoned.

§ 222.203 Modification, amendment, suspension, and revocation of certificates.

(a) When circumstances have changed so that an applicant or certificate holder desires to have any material, term, or condition of the application or certificate modified, the applicant or certificate holder must submit in writing full justification and supporting information in conformance with the provisions of this part.

(b) All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a Certificate of Exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

(c) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a condition of the certificate may subject the certificate holder to penalties provided in the Act and to suspension, revocation, or modification of the Certificate of Exemption, as provided in subpart D of 15 CFR part 904.

§ 222.204 Administration of certificates.

(a) The Certificate of Exemption covers the business or activity specified in the Certificate of Exemption at the address described therein. No Certificate of Exemption is required to cover a separate warehouse facility used by the certificate holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the Certificate of Exemption served by the warehouse or storage facility.

(b) Certificates of Exemption issued under this subpart are not transferable. However, in the event of the lease, sale, or other transfer of the operations or activity authorized by the Certificate of Exemption, the successor is not required to obtain a new Certificate of Exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in § 222.201(d).

(c) The Certificate of Exemption holder must notify the Assistant Administrator, in writing, of any change in address, in trade name of the business, or in activity specified in the certificate. The Assistant Administrator must be notified within 10 days of a change of address, and within 30 days of a change in trade name. The certificate with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended certificate to the person to whom it was issued. A certificate holder who seeks amendment of a certificate may continue all authorized activities while awaiting action by the Assistant Administrator.

(d) A Certificate of Exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to state or other law. Similarly, compliance with the provisions of any state or other law affords no immunity under any Federal laws or regulations of any other Federal agency.

(e) Any person authorized to enforce the Act may enter the premises of any Certificate of Exemption holder or of any purchaser during business hours, including places of storage, for the purpose of inspecting or of examining any records or documents and any endangered species parts.

(f) The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form and shall be retained at the address shown on the Certificate of Exemption or at the principal address of a purchaser in the manner prescribed by this subpart.

(g)(1) Holders of Certificates of Exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or

dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, as defined in § 222.201(d), must similarly maintain records of all such parts or products they receive.

(2) Such records referred to in paragraph (g)(1) of this section may consist of invoices or other commercial records, which must be filed in an orderly manner separate from other commercial records maintained and be readily available for inspection. Such records must show the name and address of the purchaser, seller, or other transferor; show the type, quantity, and identity of the part or product; show the date of such sale or transfer; and be retained, in accordance with the requirements of this subpart, for a period of not less than 3 years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a Certificate of Exemption.

(i) Each Certificate of Exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (g)(2) of this section, on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other record information the Assistant Administrator may specify from time to time.

(ii) Quarterly reports are due on January 15, April 15, July 15, and October 15.

(3) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (g)(2) of this section when the record holder demonstrates that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

§ 222.205 Import and export requirements.

(a) Any fish and wildlife subject to the jurisdiction of the National Marine Fisheries Service and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port(s) designated by the Secretary of the Interior. Shellfish and fishery products that are neither endangered nor threatened species and that are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes are excluded from this requirement. The Secretary of the Interior may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the species for other reasons if the Secretary deems it appropriate and consistent with the purpose of facilitating enforcement of the Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR part 14 for importation and exportation requirements and information.

(b) No pre-Act endangered species part shall be imported into the United States. A Certificate of Exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

(c)(1) Any person exporting from the United States any pre-Act endangered species part must possess a valid Certificate of Exemption issued in accordance with the provisions of this subpart. In addition, the exporter must provide to the Assistant Administrator, in writing, not less than 10 days prior to shipment, the following information: The name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. No shipment may be made until these requirements are met by the exporter.

(2) The exporter must send a copy of the Certificate of Exemption, and any endorsements thereto, to the District Director of Customs at the port of exportation, which must precede or accompany the shipment in order to permit the appropriate inspection prior to lading. Upon receipt, the District Director may order such inspection, as deemed necessary; the District will clear the merchandise for export, prior to the lading of the merchandise. If they are satisfied that the shipment is proper and complies with the information contained in the certificate and any endorsement thereto. The certificate, and any endorsements, will be forwarded to the Chief of the Office of Enforcement for NMFS.

(3) No pre-Act endangered species part in compliance with the requirements of this subpart may be exported except at a port or ports designated by the Secretary of the Interior, pursuant to § 222.103.

(4) Notwithstanding any provision of this subpart, it shall not be required that the Assistant Administrator authorizes the transportation in interstate or foreign commerce of pre-Act endangered species parts.

Subpart C—General Permit Procedures

§ 222.301 General requirements.

(a)(1) The regulations in this subpart C provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 222, 223, and 224 of this chapter. While this section provides generic rules and procedures applicable to all permits, other sections may provide more specific rules and procedures with respect to certain types of permits. In such cases, the requirements in all applicable sections must be satisfied.

(2) Notwithstanding paragraph (a)(1) of this section, the Assistant Administrator may approve variations from the requirements of parts 222, 223, and 224 of this chapter when the Assistant Administrator finds that an emergency exists and that the proposed variations will not hinder effective administration of those parts and will not be unlawful. Other sections within parts 222, 223, and 224 of this chapter may allow for a waiver or variation of specific requirements for emergency situations, upon certain conditions. In such cases, those conditions must be satisfied in order for the waiver or variation to be lawful.

(b) No person shall take, import, export or engage in any other prohibited activity involving any species of fish or wildlife under the jurisdiction of the Secretary of Commerce that has been determined to be endangered under the Act, or that has been determined to be threatened and for which the prohibitions of section 9(a)(1) of the Act have been applied by regulation, without a valid permit issued pursuant to these regulations. The permit shall entitle the person to whom it is issued to engage in the activity specified in the permit, subject to the limitations of the Act and the regulations in parts 222, 223, and 224 of this chapter, for the period stated on the permit, unless sooner modified, suspended or revoked.

(c) Each person intending to engage in an activity for which a permit is required by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter must apply for such permit in accordance with the requirements of these sections. If the information required for each specific, permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

(d)(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or of an agent of such person) while any animal subject to the permit is in the possession of such person or agent. Specifically, a person or his/her agent

must be in possession of a permit during the time of the authorized taking, importation, exportation, or of any other act and during the period of any transit incident to such taking, importation, exportation, or to any other act.

(2) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

(e) The authorizations on the face of a permit setting forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

(f) Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

(g) Any permit issued under parts 222, 223, and 224 of this chapter shall be displayed for inspection, upon request, to an authorized officer, or to any other person relying upon its existence.

(h) Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of parts 222, 223, or 224 of this chapter or the provisions of the permit set forth other reporting requirements.

(i) From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be kept current and shall include the names and addresses of persons with whom any fish or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

(j) Any person holding a permit pursuant to parts 222, 223, and 224 of this chapter shall allow the Assistant Administrator to enter the permit holder's premises at any reasonable hour to inspect any fish or wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by these regulations or by the Act. Such person shall display any permit issued pursuant to these regulations or to the Act upon request by an authorized officer or by any other person relying on its existence.

§ 222.302 Procedure for obtaining permits.

(a) Applications must be submitted to the Assistant Administrator, by letter containing all necessary information, attachments, certification, and signature, as specified by the regulations in parts 222, 223, and 224 of this chapter, or by the Act. In no case, other than for emergencies pursuant to § 222.301(a)(2), will applications be accepted either orally or by telephone.

(b) Applications must be received by the Assistant Administrator at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective, unless otherwise specified in the regulations or guidelines pertaining to a particular permit. The National Marine Fisheries Service will attempt to process applications deemed sufficient in the shortest possible time, but does not guarantee that the permit will be issued 90 days after notice of receipt of the application is published in the **Federal Register**.

(c)(1) Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

(2) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part. The Assistant Administrator, however, may waive any requirement for information or require any elaboration or further information deemed necessary.

§ 222.303 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless an emergency pursuant to § 222.301(a)(2) exists, and a written variation from the requirements is recorded by the National Marine Fisheries Service.

(2) No representation of an employee or agent of the United States shall be construed as a permit unless it meets the requirements of a permit defined in § 222.102.

(3) Each permit shall bear a serial number. Upon renewal, such a number may be reassigned to the permittee to whom issued so long as the permittee maintains continuity of renewal.

(b) When an application for a permit received by the Assistant Administrator is deemed sufficient, the Assistant Administrator shall, as soon as practicable, publish a notice in the **Federal Register**. Information received by the Assistant Administrator as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party, within 30 days after the date of publication of such notice, may submit to the Assistant Administrator written data, views, or arguments with respect to the taking, importation, or to other action proposed in the application, and may request a hearing in connection with the action to be taken thereon.

(c) If a request for a hearing is made within the 30-day period referred to in paragraph (b) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in paragraph (b) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the **Federal Register** not less than 15 days in advance of such hearing. Any interested person may appear at the hearing in person or through a representative and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(d) Except as provided in subpart D to 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing. If no hearing is held, as soon as practicable but not later than 30 days from the publication of the notice in the **Federal Register**, the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the **Federal Register** within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(e)(1) The Assistant Administrator shall issue the permit unless:

(i) Denial of the permit has been made pursuant to subpart D to 15 CFR part 904;

(ii) The applicant has failed to disclose material or information required, or has made false statements as to any material fact, in connection with the application;

(iii) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(iv) The authorization requested potentially threatens a fish or wildlife population; or

(v) The Assistant Administrator finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the Assistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under § 222.308, the Assistant Administrator shall publish notice thereof in the **Federal Register**, including the Assistant Administrator's finding that such permit—

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of such endangered species; and

(3) Will be consistent with the purposes and policy set forth in section 2 of the Act.

(g) The Assistant Administrator may waive the 30-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published by the Assistant Administrator in the **Federal Register** within 10 days following the issuance of the permit.

§ 222.304 Renewal of permits.

When the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, the permittee shall, unless otherwise notified in writing by the Assistant Administrator, file a request for permit renewal, together with a certified statement, verifying that the information in the original application is still currently correct. If the information is incorrect the permittee shall file a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of the permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by the expired permit until the renewal application is acted upon.

§ 222.305 Rights of succession and transfer of permits.

(a)(1) Permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain activities in connection with a business or commercial enterprise, which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraph (a)(2) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

(i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and

(ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) *Scope.* (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the

sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

(1) The type of application, either:

(i) Application for an Individual Incidental Take Permit under the Act; or

(ii) Application for a General Incidental Take Permit under the Act;

(2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;

(3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;

(4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;

(5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:

(i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;

(ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) Issuance criteria. (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

(i) The status of the affected species or stocks;

(ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;

(iii) The availability of effective monitoring techniques;

(iv) The use of the best available technology for minimizing or mitigating impacts; and

(v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

(i) The taking will be incidental;

(ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;

(iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and

(v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) *Permit conditions.* In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such

measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdication of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in § 222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(1) Title, as applicable, either—

(i) Application for permit for scientific purposes under the Act; or

(ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

(4) A description of the purpose of the proposed acts, including the following:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how?; and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and

(vii) If the capture or other taking is to be done by a contractor, a statement

as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any planned future move or transfer of the animals;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff;

(vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian's opinion, they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;

(ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;

(iii) The cause(s) of any such mortality; and

(iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301–713–1401. Allow at least 90 days for processing.

(c) *Issuance criteria.* In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant's qualifications for the proper care and maintenance of the species and the adequacy of the applicant's facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) *Terms and conditions.* Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care, and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny, or the species product; and

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing of those activities under its jurisdiction. Based on this review and processing, WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

5. Part 224 is added to read as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

Sec.
224.101 Enumeration of endangered marine and anadromous species.
224.102 Permits for endangered marine and anadromous species.
224.103 Special prohibitions for endangered marine mammals.
224.104 Incidental capture of endangered sea turtles.

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 Enumeration of endangered marine and anadromous species.

The marine and anadromous species determined by the Secretary of Commerce to be endangered pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) *Marine and anadromous fish.* Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscion macdonaldi*), Snake River sockeye salmon (*Oncorhynchus nerka*), Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*); Southern California steelhead (*Oncorhynchus mykiss*), including all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive); Upper Columbia River steelhead (*Oncorhynchus mykiss*), including the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the United States-Canada Border; Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).

(b) *Marine mammals.* Blue whale (*Balaenoptera musculus*); Bowhead whale (*Balaena mysticetus*); Caribbean monk seal (*Monachus tropicalis*); Chinese river dolphin (*Lipotes vexillifer*); Cochito (*Phocoena sinus*); Fin or finback whale (*Balaenoptera physalus*); Hawaiian monk seal (*Monachus schauinslandi*); Humpback whale (*Megaptera novaeangliae*); Indus River dolphin (*Platanista minor*); Mediterranean monk seal (*Monachus monachus*); Right whales (*Eubalaena spp.*); Saimaa seal (*Phoca hispida saimensis*); Sei whale (*Balaenoptera borealis*); Sperm whale (*Physeter catodon*); Western North Pacific (Korean) gray whale (*Eschrichtius robustus*); Steller sea lion, western population, (*Eumetopias jubatus*), which consists of Stellar sea lions from breeding colonies located west of 144° W. longitude.

(c) *Sea turtles.* Green turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico; Hawksbill turtle (*Eretmochelys imbricata*); Kemp's ridley turtle (*Lepidochelys kempii*); Leatherback turtle (*Dermochelys coriacea*); Olive ridley turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico.

Note to § 224.101(c): Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

§ 224.102 Permits for endangered marine and anadromous species.

No person shall take, import, export, or engage in any activity prohibited by section 9 of the Act involving any marine species that has been determined to be endangered under the Endangered Species Conservation Act of 1969 or the Act, and that is under the jurisdiction of the Secretary, without a valid permit issued pursuant to part 222, subpart C of this chapter.

§ 224.103 Special prohibitions for endangered marine mammals.

(a) *Approaching humpback whales in Hawaii.* Except as provided in part 222, subpart C, of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Operate any aircraft within 1,000 feet (300 m) of any humpback whale;

(2) Approach, by any means, within 100 yard (90 m) of any humpback whale;

(3) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel

or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(b) *Approaching North Atlantic right whales*—(1) *Prohibitions.* Except as provided under paragraph (b)(3) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or cause to be committed any of the following acts:

(i) Approach (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means;

(ii) Fail to undertake required right whale avoidance measures specified under paragraph (b)(2) of this section.

(2) *Right whale avoidance measures.* Except as provided under paragraph (b)(3) of this section, the following avoidance measures must be taken if within 500 yards (460 m) of a right whale:

(i) If underway, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed.

(ii) An aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

(3) *Exceptions.* The following exceptions apply to this section, but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraphs (b)(1) and (b)(2) of this section do not apply if a right whale approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraphs (b)(1) and (b)(2) of this section do not apply where compliance would create an imminent and serious threat to a person, vessel, or aircraft.

(iii) Paragraphs (b)(1) and (b)(2) of this section do not apply when approaching to investigate a right whale entanglement or injury, or to assist in the disentanglement or rescue of a right whale, provided that permission is received from the National Marine Fisheries Service or designee prior to the approach.

(iv) Paragraphs (b)(1) and (b)(2) of this section do not apply to an aircraft unless the aircraft is conducting whale watch activities.

(v) Paragraph (b)(2) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(2) of this section.

(c) *Special prohibitions relating to endangered Steller sea lion protection.* The regulatory provisions set forth in part 223 of this chapter, which govern threatened Steller sea lions, shall also apply to the western population of Steller sea lions, which consists of all Steller sea lions from breeding colonies located west of 144° W. long.

§ 224.104 Incidental capture of endangered sea turtles.

(a) Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

(b) Summer flounder fishermen in the Summer flounder fishery-sea turtle protection area who comply with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by summer flounder gear.

(c) Special prohibitions relating to leatherback sea turtles are provided at § 223.206(d)(2)(iv) of this chapter.

PART 226—DESIGNATED CRITICAL HABITAT

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

Authority: 16 U.S.C. 1533.

PART 226—[AMENDED]

7. Subpart headings A through D, §§ 226.1 and 226.2, and Figures 1 through 9 to part 226 are removed.

§§ 226.11, 226.12, 226.13, 226.21, 226.22, 226.23, 226.71, 226.72 and 226.73 [Redesignated as §§ 226.201 through 226.209]

8. Sections 226.11 through 226.13, 226.21, 226.22, 226.23, 226.71, 226.72, and 226.73 are redesignated as §§ 226.201 through 226.209, respectively.

9. Section 226.101 is added to read as follows:

§ 226.101 Purpose and scope.

The regulations contained in this part identify those habitats designated by the Secretary of Commerce as critical under section 4 of the Act, for endangered and threatened species under the jurisdiction of the Secretary of Commerce. Those species are enumerated at § 223.102 of this chapter, if threatened and at § 224.101 of this chapter, if endangered. For regulations pertaining to the designation of critical habitat, see part 424 of this title, and for regulations pertaining to prohibitions against the adverse modification or destruction of critical habitat, see part 402 of this title. Maps and charts identifying designated critical habitat that are not provided in this section may be obtained upon request to the Office of Protected Resources (see § 222.102, definition of ''Office of Protected Resources'').

10. The section headings and table headings to part 226 are revised to read as follows:

PART 226—DESIGNATED CRITICAL HABITAT

226.101 Purpose and scope.
226.201 Critical habitat for Hawaiian monk seals.
226.202 Critical habitat for Steller sea lions.
226.203 Critical habitat for Northern right whales.
226.204 Critical habitat for Sacramento winter-run chinook salmon.
226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.
226.206 Critical habitat for Umpqua River cutthroat trout.
226.207 Critical habitat for leatherback turtle.
226.208 Critical habitat for green turtle.
226.209 Critical habitat for hawksbill turtle.

Tables to Part 226

Table 1 to Part 226—Major Steller Sea Lion Rookery Sites
Table 2 to Part 226—Major Steller Sea Lion Haulout Sites in Alaska
Table 3 to Part 226—Hydrologic Units Containing Critical Habitat for Snake River Sockeye Salmon and Snake River Spring/Summer and Fall Chinook Salmon
Table 4 to Part 226—Hydrologic Units Containing Critical Habitat for Endangered Umpqua River Cutthroat Trout and Counties Contained in Each Hydrologic Unit

§ 226.202 [Amended]

11. In newly redesignated § 226.202, in the first sentence of paragraph (c)(1), the phrase ''which is identified in Figure 2'' is removed; in the first sentence of paragraph (c)(2), the phrase ''which is identified in Figure 3'' is removed; and in paragraph (c)(3), the phrase ''which is identified in Figure 4'' is removed.

§ 226.203 [Amended]

12. In newly redesignated § 226.203, in paragraph (a), the reference ''(Figure 6 to part 226)'' and, in paragraph (b), the reference ''(Figure 7 to part 226)'' are removed.

§ 226.205 [Amended]

13. In newly redesignated § 226.205, in the introductory text, the third and fourth sentences are removed.

§ 226.206 [Amended]

14. In newly redesignated § 226.206, in paragraph (a), the third and fourth sentences are removed.

PART 227 [REDESIGNATED AS PART 223 AND AMENDED]

15. Part 227 is redesignated as part 223.

16. The heading for part 223 is revised to read as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

17. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

PART 223—[AMENDED]

18. Sections 223.1 through 223.4 and subpart headings C and D are removed.

§§ 223.11, 223.12, 223.21, 223.22, and 223.71 [Redesignated as §§ 223.201 through 223.205]

19–20. Sections 223.11, 223.12, 223.21, 223.22, and 223.71 are redesignated as §§ 223.201 through 223.205, respectively.

§ 223.72 [Redesignated as § 223.206]

21. Section 223.72 is redesignated § 223.206.

22. Subpart B heading is revised to read as follows:

Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

§§ 223.203, 223.204 and 223.205 [Amended]

23. Under subpart B, §§ 223.203, 223.204, and 223.205 headings are revised to read as: ''Anadromous fish,'' ''Exceptions to prohibitions relating to anadromous fish,'' and ''Sea turtles,'' respectively.

24. Sections 223.101 and 223.102 are added to subpart A to read as follows:

Subpart A—General Provisions

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations contained in this part apply only to the threatened species enumerated in § 223.102.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing threatened species.

§ 223.102 Enumeration of threatened marine and anadromous species.

The species determined by the Secretary of Commerce to be threatened pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation of Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) *Marine and anadromous fish.* (1) Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*). Includes all natural population(s) of spring/summer chinook salmon in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, and Salmon River.

(2) Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). Includes all natural population(s) of fall chinook in the mainstem Snake River and any of the following subbasins: Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River.

(3) Central California Coast Coho Salmon (*Oncorhynchus kisutch*). Includes all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

(4) Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*). Includes all coho salmon naturally reproduced in streams between Cape Blanco in Curry County, OR, and Punta Gorda in Humboldt County, CA.

(5) Central California Coast steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, California (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California.

(6) South-Central California Coast steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River.

(7) Snake River Basin steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.

(8) Lower Columbia River steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls and steelhead from the Little and Big White Salmon Rivers in Washington;

(9) Central Valley, California steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries. Excluded are steelhead from San Francisco and San Pablo Bays and their tributaries.

(10) Oregon Coast coho salmon (*Oncorhynchus kisutch*). Includes all naturally spawned populations of coho salmon in streams south of the Columbia River and north of Cape Blanco in Curry County, OR.

(11) Gulf sturgeon (Acipenser oxyrinchus desotoi).

(b) *Marine plants.* Johnson's seagrass (Halophila johnsonii).

(c) *Marine mammals.* Guadalupe fur seal (*Arctocephalus townsendi*); Steller sea lion, eastern population (*Eumetopias jubatus*), which consists of all Stellar sea lions from breeding colonies located east of 114° W. longitude.

(d) *Sea turtles.* Green turtle (*Chelonia mydas*) except for those populations listed under § 224.101(c) of this chapter; Loggerhead turtle (*Caretta caretta*); Olive ridley turtle (*Lepidochelys olivacea*) except for those populations listed under § 224.101(c) of this chapter.

Note to § 223.201(d): Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

§ 223.201 [Amended]

25. In newly redesignated § 223.201, in paragraph (b)(1), the phrase ''part 222 subpart C—Endangered Fish or Wildlife Permits.'' is removed and replaced with ''part 222 subpart C—General Permit Procedures,'' and in paragraph (b)(2)(iv), the phrase ''Director, Southwest Region, National Marine Fisheries Service, 300

S. Ferry Street, Terminal Island, CA 90731.'' is removed and replaced with ''Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.''

§ 223.202 [Amended]

26. In newly redesignated § 223.202, in paragraph (b)(1), the phrase ''50 CFR part 222 subpart C—Endangered Fish or Wildlife Permits.'' is removed and replaced with ''part 222 subpart C—General Permit Procedures.'' and in § 223.202, in Table 1, the table title is revised to read ''Table 1 to § 223.202—Listed Steller Sea Lion Rookery Sites/1/''.

§ 223.203 [Amended]

27. In newly redesignated § 223.203, in paragraph (a), the text ''227.4 (f), (g), (h), and (i)'' is removed and replaced with ''223.102(a)(1) through (a)(4)''; and the last sentence ''These prohibitions shall become effective for the threatened species of salmon listed in § 227.4(i) on August 18, 1997.'' is removed.

28. In newly redesignated § 223.203, paragraph (b)(1), the text ''in part 222 of this chapter II'' is added after the word ''regulations''; the text ''§ 227.4 (f), (g), (h), and (i)'' is replaced with ''§ 223.102(a)(1) through (a)(4)''; and the second sentence of paragraph (b)(1) is removed.

29. In newly redesignated § 223.203, paragraph (b)(2), the reference ''§ 227.4(i)'' is replaced with ''§ 223.102(a)(4)''.

30. In newly redesignated § 223.203, paragraph (b)(3), the reference ''§ 227.4(i)'' is replaced with ''§ 223.102(a)(4)''.

31. Newly redesignated § 223.204 is revised to read as follows:

§ 223.204 Exceptions to prohibitions relating to anadromous fish.

(a) The following exceptions to the prohibitions of § 223.203(a) of this part apply to the Southern Oregon/Northern California Coast (SONCC) coho salmon.

(1) Take of SONCC coho salmon within 3 miles (approximately 5 km) of the coast, and in the bay, estuarine or freshwater fisheries regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a fisheries harvest program conducted in accordance with the Oregon Coastal Salmon Restoration Initiative of March 1997 (OCSRI). NMFS must have issued a written concurrence that the fisheries regulations are consistent with the OCSRI, using information provided through the April 1997 Memorandum of Agreement (MOA) between the State of Oregon and NMFS.

(2) Incidental take of SONCC coho salmon in ocean fisheries within 3 miles (approximately 5 km) of the coast that are regulated under the sole authority of the State of California is not prohibited, provided that the ocean salmon fishing regulations adopted by the California Fish and Game Commission and CDFG for recreational and commercial fisheries within 3 miles (approximately 5 km) of the coast are consistent with the Pacific Fishery Management Council's Fishery Management Plan for Ocean Salmon Fisheries and the annual ocean salmon fishing regulations issued by the Secretary of Commerce for the Federal EEZ.

(3) Take of SONCC coho salmon in a hatchery program regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a hatchery program conducted in accordance with the OCSRI, and the take is counted against the total allocation of harvest-related mortality as specified in the OCSRI. NMFS must have issued a written concurrence stating that the hatchery program is consistent with the OCSRI including the hatchery and genetic management plan adopted pursuant to the OCSRI, using information provided through the MOA.

(4) Take of SONCC coho salmon in fisheries research and monitoring activities conducted in California and Oregon is not prohibited provided that:

(i) Research and monitoring involving directed take of coho salmon is conducted by CDFG personnel (in California) and ODFW personnel (in Oregon);

(ii) The CDFG and ODFW, respectively, provide NMFS with a list of all research and monitoring activities involving coho salmon directed take planned for the coming year for NMFS' review and approval. This report shall include an estimate of the total directed take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact;

(iii) The CDFG and ODFW, respectively, provide NMFS annually with the results of research and monitoring studies directed at SONCC coho salmon, including a report of the directed take resulting from the studies;

(iv) The CDFG and ODFW, provide NMFS annually with a list of all research and monitoring studies permitted that may allow incidental take of listed coho salmon during the coming year and report the level of incidental take of listed coho salmon from the previous year's research and monitoring activities, for NMFS' review and approval.

(v) The research and monitoring activities do not include the use of electrofishing in any body of water known or suspected to contain coho salmon.

(5) Incidental take of the SONCC coho salmon in Oregon resulting from a habitat restoration activity is not prohibited, provided that:

(i) The activity is conducted pursuant to a watershed action or restoration plan that has been affirmed by the state in writing as consistent with NMFS' approved state watershed plan guidelines set forth in § 222.307(c) of this chapter. NMFS shall also concur in writing that the plan is consistent with the state watershed plan guidelines; or

(ii) Until a watershed action or restoration plan is approved by both Oregon and NMFS as described in paragraph (a)(5)(i) of this section, or until August 18, 1999, whichever occurs first, the ODFW has made a written finding that the activity is consistent with state restoration activity guidelines that NMFS has agreed, in writing, meet the standards set forth in § 222.307(c) of this chapter.

(6) Incidental take of the SONCC coho salmon in California resulting from a habitat restoration activity, as defined in paragraph (a)(6)(iii) of this section, is not prohibited, provided that California has a program in effect that NMFS finds will assure technically supported watershed assessments and coordinated long-term monitoring strategies for watershed protection plans and activities and:

(i) The activity is conducted pursuant to a watershed protection plan that CDFG has affirmed, in writing, is consistent with NMFS' approved state watershed plan guidelines set forth in § 222.307(c) of this chapter for California's Watershed Protection Program. NMFS must concur, in writing, that the plan is consistent with those guidelines; or

(ii) Until a watershed protection or restoration plan is certified by the State of California and NMFS as described in paragraph (a)(6)(i) of this section, or until August 18, 1999, whichever occurs first, when NMFS has made a written finding that the activity is consistent with State of California conservation guidelines previously found to meet the standards set forth in § 222.307(c) of this chapter by NMFS.

32. Newly redesignated § 223.205 is revised to read as follows:

§ 223.205 Sea turtles.

(a) The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened

species of sea turtle, except as provided in § 223.206.

(b) Except as provided in § 223.206, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 223.206(d);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of § 223.206(d);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, § 223.206(d)(3) or (d)(4);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in § 223.206(d)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of § 223.206(d)(1);

(7) Fail to comply immediately, in the manner specified at § 600.730 (b) through (d) of this Title, with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED; or

(15) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under this subpart B has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of § 223.207 (c) or (d) has the burden of proving such claim.

33. Newly redesignated § 223.206 is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

(a) *Permits*—(1) *Scientific research, education, zoological exhibition, or species enhancement permits.* The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 223.205(a) for scientific or educational purposes, for zoological exhibition, or to enhance the propagation or survival of threatened species of sea turtles, in accordance with and subject to the conditions of part 222, subpart C—General Permit Procedures.

(2) *Incidental-take permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under § 223.205(a) in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the implementing regulations in part 222 of this chapter. Such permits may be issued for the incidental taking of threatened and endangered species of sea turtles.

(b) *Exception for injured, dead, or stranded specimens.* If any member of any threatened species of sea turtle is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Whenever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator and shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

(7) Such other information as the Assistant Administrator may require.

(c) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a state fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at the Assistant Administrator's discretion.

(d) *Exception for incidental taking.* The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs

(d)(1) through (d)(5) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

(1) *Handling and resuscitation requirements.* (i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(*1*) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot; or

(*2*) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period of 1 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to 24, if possible) must be returned to the water in the same manner.

(ii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) *Gear requirements*—(i) *TED requirement for shrimp trawlers.* Any shrimp trawler that is in the Atlantic Area or Gulf Area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler. Exceptions to the TED requirement for shrimp trawlers are provided in paragraph (d)(2)(ii) of this section.

(ii) *Exemptions from the TED requirement*—(A) *Alternative tow-time restrictions.* A shrimp trawler is exempt from the TED requirements of paragraph (d)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (d)(3)(i) of this section and if it:

(*1*) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(*2*) Is a bait shrimper that retains all live shrimp on board in a container with a circulating seawater system, if it does not possess more than 32 pounds (14.5 kg) of dead shrimp on board, and if it has on board a valid original state bait-shrimp license (if in a state that requires such a license);

(*3*) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing; and

(*4*) Is in an area during a period for which tow-time restrictions apply under paragraphs (d)(3) (ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs.

(B) *Exempted gear or activities.* The following fishing gear or activities are exempted from the TED requirements of paragraph (d)(2)(i) of this section:

(*1*) A single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net;

(*2*) A beam or roller trawl, if the frame is outfitted with rigid vertical bars, and if none of the spaces between the bars, or between the bars and the frame, exceeds 4 inches (10.2 cm); and

(*3*) A shrimp trawler fishing for, or possessing, royal red shrimp, if royal red shrimp constitutes at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler.

(iii) *Gear requirement—summer flounder trawlers*—(A) *TED requirement.* Any summer flounder trawler in the summer flounder fishery-sea turtle protection area must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the summer flounder trawler. Exceptions to the TED requirement for summer flounder trawlers are provided in paragraph (d)(2)(iii)(B) of this section.

(B) *Exemptions from the TED requirement.* Any summer flounder trawler north of 35°46.1′ N. lat. (Oregon Inlet, NC) from January 15 through March 15 annually is exempt from the TED requirement of paragraph (d)(2)(iii)(A) of this section, unless the Assistant Administrator determines that TED use is necessary to protect sea turtles or ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section.

(C) *Monitoring.* Summer flounder trawlers must carry onboard a NMFS-approved observer if requested by the Southeast Regional Administrator or the Northeast Regional Administrator. A written notification will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owner or operator of the vessel. Owners and operators must comply with the terms and conditions specified in such written notification. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws. Information collected by observers may be used for enforcement purposes.

(D) *Additional sea turtle conservation measures.* The Assistant Administrator may impose other such restrictions upon summer flounder trawlers as the Assistant Administrator deems necessary or appropriate to protect sea turtles and ensure compliance, pursuant to the procedures of paragraph (d)(4) of this section. Such measures may include, but are not limited to, a requirement to use TEDs in areas other than summer flounder fishery-sea turtle protection area, a requirement to use limited tow-times, and closure of the fishery.

(iv) *Gear requirement—leatherback conservation zone*—(A) *Leatherback surveys.* From January 1 through June 30 of each year, weekly aerial surveys will be conducted in the leatherback conservation zone by NMFS or state agents, contingent upon weather conditions. If sighting rates of greater than 10 leatherback turtles per 50 nautical miles (92.6 km) of trackline are observed, the aerial surveys of that area will be replicated within 24 hours, or as soon as practicable thereafter.

(B) *TED requirements and registration.* If surveys pursuant to paragraph (d)(2)(iv)(A) of this section indicate a sighting rate within the leatherback conservation zone of greater than 10 leatherback sea turtles per 50 nautical miles (92.6 km) of trackline, NMFS will close an area of the leatherback conservation zone encompassing all, or a portion of, inshore waters and offshore waters 10 nautical miles (18.5 km) seaward of the

COLREGS demarcation line, bounded by 1° lat. coinciding with the trackline, within the leatherback conservation zone. This closure will be for a 2-week period. Within such closed area, fishing by any shrimp trawler required to have a NMFS-approved TED installed in each net rigged for fishing is prohibited, unless the TED installed is one described at § 223.207(a)(7)(ii)(B) or, prior to October 13, 1999, § 223.207(c)(1)(iv)(B), and the owner or operator of the shrimp trawler has notified the Southeast Regional Administrator of his or her intention to fish in that area, in accordance with the procedure provided in paragraph (d)(5) of this section. If requested in writing from the Southeast Regional Administrator, owners and operators of shrimp trawlers in the leatherback conservation zone must carry NMFS-approved observers aboard such vessel(s). A shrimp trawler in the leatherback conservation zone must comply with the terms and conditions specified in such written request, as well as provide information on trawling hours, gear modifications, and turtle captures.

(C) *Notification.* NMFS will immediately announce specific area closures on the NOAA weather radio channel, in newspapers, and other media. Specific area closures will be effective upon filing for public inspection at the Office of the Federal Register. Owners and operators of shrimp trawl vessels in the leatherback conservation zone are responsible for monitoring the NOAA weather radio channel for closure announcements. Shrimp trawlers may also call the Southeast Regional Office at (813) 570–5312 to receive updated area closure information.

(3) *Tow-time restrictions*—(i) *Duration of tows.* If tow-time restrictions are utilized pursuant to paragraph (d)(2)(ii), (d)(3)(ii), or (d)(3)(iii) of this section, a shrimp trawler must limit tow times. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water. Tow times may not exceed:

(A) 55 minutes from April 1 through October 31; and

(B) 75 minutes from November 1 through March 31.

(ii) *Alternative—special environmental conditions.* The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(iii) *Substitute—ineffectiveness of TEDs.* The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (d)(2)(i) of this section, if the Assistant Administrator determines that TEDs are ineffective in protecting sea turtles.

(iv) *Notice; applicability; conditions.* The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraph (d)(3)(ii) or (iii) of this section in the **Federal Register** and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements. The notification will specify the effective dates, the geographic area where tow-time restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, to register vessels in accordance with procedures at paragraph (d)(5) of this section, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that action.

(v) *Procedures.* The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions necessitating the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rulemaking.

(4) *Limitations on incidental takings during fishing activities*—(i) *Limitations.* The exemption for incidental takings of sea turtles in paragraph (d) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed under the Act.

(ii) *Determination; restrictions on fishing activities.* The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator may restrict fishing activities in order to conserve a species listed under the Act, including, but not limited to, restrictions on the fishing activities of vessels subject to paragraph (d)(2) of this section. The Assistant Administrator will take such action if the Assistant Administrator determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw or modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) *Notice; applicability; conditions.* The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the **Federal Register**. The Assistant Administrator will provide as much advance notice as possible, consistent with the requirements of the Act, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of restriction of fishing activities will include findings in support of the restriction, will specify the time and area where the restriction is applicable, and will specify any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Such conditions and restrictions may include,

but are not limited to, limitations on the types of fishing gear that may be used, tow-time restrictions, alteration or extension of the periods of time during which particular tow-time requirements apply, requirements to use TEDs, registration of vessels in accordance with procedures at paragraph (d)(5) of this section, and requirements to provide observers. Notification of withdrawal or modification will include findings in support of that action.

(iv) *Procedures.* The Assistant Administrator will consult with the appropriate fisheries officials (state or Federal) where the fishing activities are located in issuing notification of a determination concerning unauthorized takings or notification concerning the restriction of fishing activities. An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each. The Assistant Administrator may invite comments on such action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

(5) *Registration.* If the Assistant Administrator imposes restrictions under paragraph (d)(2)(iv), (d)(3)(ii), (d)(3)(iii), or (d)(4)(ii) of this section, the Assistant Administrator may require the owner and operator of a vessel to register before entering an area where, and during the time when, the restrictions apply. If registration is required, the vessel's owner and operator must submit the following information to the NMFS Regional Office:

(i) The name and official number (or registration number) of the vessel;

(ii) The names, mailing and street addresses, and telephone numbers of the vessel owner and operator;

(iii) The permit number or other identification of relevant state or Federal fishing permit(s);

(iv) Where and when the vessel intends to fish;

(v) Where and when the vessel will depart on any fishing trip, with sufficient specificity to allow for an observer to embark on the trip; and

(vi) Any changes in the information submitted under paragraphs (d)(5)(i) through (d)(5)(v) of this section. Failure to do so immediately will void the registration, rendering unlawful any subsequent entry of the fishing vessel into the area where and during the time when the restrictions apply.

34. Section 223.207 is added to subpart B to read as follows:

§ 223.207 Approved TEDs.

Any netting, webbing, or mesh that may be measured to determine compliance with this section is subject to measurement, regardless of whether it is wet or dry. Any such measurement will be of the stretched mesh size.

(a) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as ''hooped hard TEDs,'' such as the NMFS and Cameron TEDs (Figures 1 & 2 to this part), or ''single-grid hard TEDs,'' such as the Matagorda and Georgia TEDs (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) *Construction materials.* A hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(i) Solid steel rod with a minimum outside diameter of ¼ inch (0.64 cm);

(ii) Fiberglass or aluminum rod with a minimum outside diameter of ½ inch (1.27 cm); or

(iii) Steel or aluminum tubing with a minimum outside diameter of ½ inch (1.27 cm) and a minimum wall thickness of ⅛ inch (0.32 cm) (also known as schedule 40 tubing).

(2) *Method of attachment.* A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(3) *Angle of deflector bars.* (i) The angle of the deflector bars must be between 30° and 55° from the normal, horizontal flow through the interior of the trawl, except as provided in paragraph (a)(3)(ii) of this section.

(ii) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed 55°, and:

(A) If the deflector bars that run from top to bottom are attached to the bottom frame of the TED, the angle of the bottom-most 4 inches (10.2 cm) of each deflector bar, measured along the bars, must not exceed 45° (Figures 14a and 14b to this part);

(B) If the deflector bars that run from top to bottom are not attached to the bottom frame of the TED, the angle of the imaginary lines connecting the bottom frame of the TED to the bottom end of each deflector bar which runs from top to bottom must not exceed 45° (Figure 15 to this part).

(4) *Space between bars.* The space between deflector bars and between the deflector bars and the frame must not exceed 4 inches (10.2 cm).

(5) *Direction of bars.* The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED.

(6) *Position of escape opening.* The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in its deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.

(7) *Size of escape opening*—(i) *Hooped hard TED.* On a hooped hard TED, the escape opening must not be smaller than 25 inches by 25 inches (63.5 cm by 63.5 cm) in the Gulf Area, or 30 inches by 30 inches (76.2 cm by 76.2 cm) in the Atlantic Area. A door frame may not be used over the escape opening; however, a webbing flap may be used as provided in paragraph (e)(4)(iv)(C) of this section.

(ii) *Single-grid hard TED*—(A) *Escape opening for standard single-grid hard TED.* On a single-grid hard TED, the cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. (Figure 13 to this part illustrates the dimensions of this cut.) The resulting escape opening in the net webbing must measure at least 32 inches (81.3 cm) in horizontal taut length and, simultaneously, 10 inches (25.4 cm) in vertical taut height in the Gulf Area; or 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The vertical measurement must be taken at the midpoint of the horizontal measurement.

(B) *Escape opening for leatherback turtles.* A single-grid hard TED escape opening shall be enlarged to allow leatherback turtles to escape by cutting an exit hole in the extension forward of the TED frame 26 inches (66 cm) deep, on each side, by 83 inches (211 cm) across (Figures 12a and 12b to this part). Excess webbing is removed by cutting across ½ mesh forward of the TED frame. The exit hole cover is made by cutting a 133-inch (338-cm) by 58-inch (148 cm) piece of webbing no smaller than 1½ inch (4 cm) stretch mesh and no larger than 1⅝ inch (4.2 cm) stretch

mesh. The 133-inch (338 cm) edge of the cover is attached to the forward edge of the opening (83-inch (211-cm) edge) with a sewing sequence of 3:2. The cover should overlap 5 inches (13 cm) of the exit hole on each side. The side of the cover is attached, maintaining the 5-inch (13-cm) overlap, to the side of the opening by sewing 28 inches (71 cm) of the cover to 26 inches (66 cm) of the opening forward of the TED frame and by sewing 15 inches (38 cm) of the cover to 15 inches (38 cm) of the extension behind the TED frame. The cover may extend no more than 24 inches (61 cm) behind the posterior edge of the TED frame. The circumference of the exit opening must be 142 inches (361 cm) when stretched. If an accelerator funnel is used with a single-grid hard TED, modified as above, it must also have a minimum circumference of 142 inches (361 cm).

(8) *Size of hoop or grid*—(i) *Hooped hard TED.* (A) An oval front hoop on a hard TED must have an inside horizontal measurement of at least 32 inches (81.3 cm) and an inside vertical measurement of at least 20 inches (50.8 cm) in the Gulf Area, or an inside horizontal measurement of at least 35 inches (88.9 cm) and an inside vertical measurement of at least 30 inches (76.2 cm) in the Atlantic Area.

(B) A circular front hoop on a hard TED must have an inside diameter of at least 32 inches (81.3 cm) in the Gulf Area or 35 inches (88.9 cm) in the Atlantic Area.

(ii) *Single-grid hard TED.* A single-grid hard TED must have an inside horizontal and vertical measurement of at least 28 inches (71.1 cm) in the Gulf Area or 30 inches (76.2 cm) in the Atlantic Area. The required inside measurements must be at the mid-point of the deflector grid.

(9) *Flotation.* Floats must be attached to the top one-half of all hard TEDs with bottom escape openings. The floats may be attached either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface of the TED. Floats must be attached with heavy twine or rope. Floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded ethylene vinyl acetate unless otherwise specified. The requirements of this paragraph may be satisfied by compliance with either the dimension requirements of paragraph (a)(9)(i) of this section, or the buoyancy requirements of paragraph (a)(9)(ii) of this section, or the buoyancy-dimension requirements of paragraph (a)(9)(iii) of this section. If roller gear is used pursuant to paragraph (d)(5) of this section, the roller gear must be included in the circumference measurement of the TED or the total weight of the TED.

(i) *Float dimension requirements.* (A) For hard TEDs with a circumference of 120 inches (304.8 cm) or more, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(B) For hard TEDs with a circumference of less than 120 inches (304.8 cm), a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or one expanded polyvinyl chloride or expanded ethylene vinyl acetate float, no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(ii) *Float buoyancy requirements.* Floats of any size and in any combination must be attached such that the combined buoyancy of the floats, as marked on the floats, equals or exceeds the weight of the hard TED, as marked on the TED. The buoyancy of the floats and the weight of the TED must be clearly marked on the floats and the TED as follows:

(A) *Float buoyancy markings.* Markings on floats must be made in clearly legible raised or recessed lettering by the original manufacturer. The marking must identify the buoyancy of the float in water, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the buoyancy in English units. The marking must identify the nominal buoyancy for the manufactured float.

(B) *TED weight markings.* The marking must be made by the original TED manufacturer and must be permanent and clearly legible. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to the original manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked.

(iii) *Buoyancy-dimension requirements.* Floats of any size and in any combination, provided that they are marked pursuant to paragraph (a)(9)(ii)(A) of this section, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:

(A) For floats constructed of aluminum or hard plastic, regardless of the size of the TED grid, the combined buoyancy must equal or exceed 14 lb (6.4 kg);

(B) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches (304.8 cm) or more, the combined buoyancy must equal or exceed 20 lb (9.1 kg); or

(C) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is less than 120 inches (304.8 cm), the combined buoyancy must equal or exceed 10 lb (4.5 kg).

(b) *Special Hard TEDs.* Special hard TEDs are hard TEDs which do not meet all of the design and construction criteria of the generic standards specified in paragraph (a) of this section. The following special hard TEDs are approved TEDs:

(1) *Flounder TED* (Figure 10 to this part). The Flounder TED is approved for use only in the Atlantic summer flounder bottom trawl fishery. The Flounder TED is not an approved TED for use by shrimp trawlers. The Flounder TED must be constructed of at least 1¼ inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least ⅛ inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. One or more additional vertical bars running from the bottom bar to the horizontal bar must divide the opening at the bottom into two or more rectangles, each with a maximum height of 10 inches (25.4 cm) and a maximum width of 14½ inches (36.8 cm). This TED must comply with paragraphs (a)(2), (a)(3), (a)(6), and (a)(7)(ii) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, and the size of the escape opening,

except that the deflector bars must be positioned in the net to deflect turtles to the escape opening in the top of the trawl. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED.

(2) *Jones TED* (Figure 11 to this part). The Jones TED must be constructed of at least 1¼ inch (3.2 cm) outside diameter aluminum or steel pipe, and the pipe must have a wall thickness of at least ⅛ inch (0.3 cm). It must be generally oval in shape with a flattened bottom. The deflector bars must be attached to the frame at a 45° angle from the horizontal positioning downward and each bar must be attached at only one end to the frame. The deflector bars must be attached and lie in the same plane as the frame. The space between the ends of the bottom deflector bars and the bottom frame bar must be no more than 3 inches (7.6 cm). The spacing between the bottom three deflector bars on each side must be no greater than 2½ inches (6.4 cm). The spacing between all other deflector bars must not exceed 3½ inches (8.9 cm) and spacing between ends of opposing deflector bars also must not exceed 3½ inches (8.9 cm). This TED must comply with paragraphs (a)(2), (a)(3), (a)(6), (a)(7)(ii), (a)(8)(ii), and (a)(9) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, the size of the escape opening, the size of the grid, and flotation.

(c) *Soft TEDs.* Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. Prior to October 13, 1999, the following soft TEDs are approved TEDs:

(1) *Parker TED.* The Parker TED is a soft TED, consisting of a single triangular panel, composed of webbing of two different mesh sizes, that forms a complete barrier inside a trawl and that angles toward an escape opening in the top of the trawl.

(i) *Excluder Panel.* (Figure 5 to this part) The excluder panel of the Parker TED must be constructed of a single triangular piece of 8-inch (20.3 cm) stretched mesh webbing and two trapezoidal pieces of 4-inch (10.2-cm) stretched mesh webbing. The webbing must consist of number 48 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The leading edge of the 8-inch (20.3-cm) mesh panel must be 36 meshes wide. The 8-inch (20.3-cm) mesh panel must be tapered on each side with all-bar cuts to converge on an apex, such that the length of each side is 36 bars. The leading edges of the 4-inch (10.2-cm) mesh panels must be 8 meshes wide. The edges of the 4-inch (10.2-cm) mesh panels must be cut with all-bar cuts running parallel to each other, such that the length of the inner edge is 72 bars and the length of the outer edge is 89 bars and the resulting fore-and-aft edge is 8 meshes deep. The two 4-inch (10.2-cm) mesh panels must be sewn to the 8-inch (20.3-cm) mesh panel to create a single triangular excluder panel. The 72-bar edge of each 4-inch (10.2-cm) mesh panel must be securely joined with twine to one of the 36-bar edges of the 8-inch (20.3-cm) mesh panel, tied with knots at each knot of the 4-inch (10.2-cm) webbing and at least two wraps of twine around each bar of 4-inch (10.2-cm) mesh and the adjoining bar of the 8-inch (20.3-cm) mesh. The adjoining fore-and-aft edges of the two 4-inch (10.2-cm) mesh panels must be sewn together evenly.

(ii) *Limitations on which trawls may have a Parker TED installed.* The Parker TED must not be installed or used in a two-seam trawl with a tongue, nor in a triple-wing trawl (a trawl with a tongue along the headrope and a second tongue along the footrope). The Parker TED may be installed and used in any other trawl if the taper of the body panels of the trawl does not exceed 4b1p and if it can be properly installed in compliance with paragraph (c)(1)(iii) of this section.

(iii) *Panel installation*—(A) *Leading edge attachment.* The leading edge of the excluder panel must be attached to the inside of the bottom of the trawl across a straight row of meshes. For a two-seam trawl or a four-seam, tapered-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel, from seam to seam. For a four-seam, straight-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel and half the height of each wing panel of the trawl. Every mesh of the leading edge of the excluder panel must be evenly sewn to this row of meshes; meshes may not be laced to the trawl. The row of meshes for attachment to the trawl must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

(*1*) For a mesh size of 2¼ inches (5.7 cm), 152–168 meshes;

(*2*) For a mesh size of 2⅛ inches (5.4 cm), 161–178 meshes;

(*3*) For a mesh size of 2 inches (5.1 cm), 171–189 meshes;

(*4*) For a mesh size of 1⅞ inches (4.8 cm), 182–202 meshes;

(*5*) For a mesh size of 1¾ inches (4.4 cm), 196–216 meshes;

(*6*) For a mesh size of 1⅝ inches (4.1 cm), 211–233 meshes;

(*7*) For a mesh size of 1½ inches (3.8 cm), 228–252 meshes;

(*8*) For a mesh size of 1⅜ inches (3.5 cm), 249–275 meshes; and

(*9*) For a mesh size of 1¼ inches (3.2 cm), 274–302 meshes.

(B) *Apex attachment.* The apex of the triangular excluder panel must be attached to the inside of the top body panel of the trawl at the centerline of the trawl. The distance, measured aft along the centerline of the top body panel from the same row of meshes for attachment of the excluder panel to the bottom body panel of the trawl, to the apex attachment point must contain the following number of meshes, depending on the stretched mesh size used in the trawl:

(*1*) For a mesh size of 2¼ inches (5.7 cm), 78–83 meshes;

(*2*) For a mesh size of 2⅛ inches (5.4 cm), 83–88 meshes;

(*3*) For a mesh size of 2 inches (5.1 cm), 87–93 meshes;

(*4*) For a mesh size of 1⅞ inches (4.8 cm), 93–99 meshes;

(*5*) For a mesh size of 1¾ inches (4.4 cm), 100–106 meshes;

(*6*) For a mesh size of 1⅝ inches (4.1 cm), 107–114 meshes;

(*7*) For a mesh size of 1½ inches (3.8 cm), 114–124 meshes;

(*8*) For a mesh size of 1⅜ inches (3.5 cm), 127–135 meshes; and

(*9*) For a mesh size of 1¼ inches (3.2 cm), 137–146 meshes.

(C) *Side attachment.* The sides of the excluder panel must be attached evenly to the inside of the trawl from the outside attachment points of the excluder panel's leading edge to the apex of the excluder panel. Each side must be sewn with the same sewing sequence, and, if the sides of the excluder panel cross rows of bars in the trawl, the crossings must be distributed evenly over the length of the side attachment.

(iv) *Escape opening.* The escape opening for the Parker soft TED must match one of the following specifications:

(A) *Longitudinal cut.* A slit at least 56 inches (1.4 m) in taut length must be cut along the centerline of the top body panel of the trawl net immediately forward of the apex of the panel webbing. The slit must not be covered or closed in any manner. The edges and end points of the slit must not be reinforced in any way; for example, by attaching additional rope or webbing or by changing the orientation of the webbing.

(B) *Leatherback escape opening.* A horizontal cut extending from the attachment of one side of the deflector panel to the trawl to the attachment of

the other side of the deflector panel to the trawl must be made in a single row of meshes across the top of the trawl and measure at least 96 inches (244 cm) in taut width. All trawl webbing above the deflector panel between the 96-inch (244-cm) cut and edges of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap must not be larger than the width of the forward edge of the escape opening. The flap must not extend more than 12 inches (30.4 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the top of the trawl but must not be attached farther aft than the row of meshes through the rear point of the escape opening. One row of steel chain not larger than 3⁄16 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain must not exceed 96 inches (244 cm). A Parker TED using the escape opening described in this paragraph meets the requirements of § 223.206(d)(2)(iv)(B).

(2) [*Reserved*]

(d) *Allowable modifications to hard TEDs and special hard TEDs.* Unless otherwise prohibited in paragraph (b) of this section, only the following modifications may be made to an approved hard TED or an approved special hard TED:

(1) *Floats.* In addition to floats required pursuant to paragraph (a)(9) of this section, floats may be attached to the top one-half of the TED, either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(2) *Accelerator funnel.* An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater than 1⅝ inches (4.1 cm), if it has an inside horizontal opening of at least 39 inches (99.1 cm) when measured in a taut position, if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than ⅓ of the circumference of the funnel is attached, and if the inside horizontal opening of at least 39 inches (99.1 cm) is maintained. In a bottom-opening TED, only the top ⅓ of the circumference of the funnel may be attached to the TED. In a top-opening TED, only the bottom ⅓ of the circumference of the funnel may be attached to the TED.

(3) *Webbing flap.* A webbing flap may be used to cover the escape opening under the following conditions: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size no larger than 1⅝ inches (4.1 cm); it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches (15.2 cm) behind the posterior edge of the grid; and it does not extend more than 24 inches (61.0 cm) beyond the posterior edge of the grid, except for trawlers fishing in the Gulf SFSTCA or Atlantic SFSTCA with a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, in which case the webbing flap must not extend beyond the posterior edge of the grid.

(4) *Chafing webbing.* A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.

(5) *Roller gear.* Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:

(i) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches (15.24 cm), and the maximum width of the axle rod shall be 12 inches (30.4 cm). The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch (2.5 cm) at the center of the roller. The support rods and axle rod must be made from solid steel or solid aluminum rod no larger than ½ inch (1.28 cm) in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.

(ii) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope or heavy twine passed through the center of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3½ inches (8.0 cm), the minimum outside diameter of the roller shall be 2 inches (5.1 cm), and the maximum length of the roller shall be 12 inches (30.4 cm). The roller must lie entirely behind the plane of the face of the grid.

(e) *Revision of generic design criteria, and approval of TEDs, of allowable modifications of hard TEDs, and of special hard TEDs.* (1) The Assistant Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (a) of this section, may approve special hard TEDs in addition to those listed in paragraph (b) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (d) of this section, or may approve other TEDs, by regulatory amendment, if, according to a NMFS-approved scientific protocol, the TED demonstrates a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990) and will be used only for testing relating to hard TED designs. Testing under any protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Dr., Miami, FL 33149–1003.

(2) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to § 223.206(d)(2). Applications should be made to the Southeast Regional Administrator (see § 222.102 definition of ''Southeast Regional Administrator'').

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

35. The authority citation for part 648 continues to read as follows:

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

§ 648.106 [Amended]

36. In § 648.106, introductory text, remove the text, ''parts 217 222, 227'' and add in its place, ''parts 222 and 223''.

37. In § 648.106(a), remove the text, ''§ 227.72(e)(1)(i) and (ii)'' and add in its place, ''§ 223.206(d)(1)''.

38. In § 648.106(c), remove the text, ''§ 227.72(e)(4)'' and add in its place, ''§ 223.207(b)(1)'' and remove the text from the last sentence, '', and bounded on the east by a line 7 nm from the shoreward boundary of the EEZ.''.

§ 648.126 [Amended]

39. In § 648.126, remove the text, ''217 and 227'' and add in its place, ''222 and 223''.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

40. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq., and 3631 *et seq.*

§ 679.2 [Amended]

41. In § 679.2, in the definition for ''Steller Sea Lion Protection Areas,'' remove the text, ''227.12'' and add in its place, ''223.202''.

§ 679.22 [Amended]

42. In Tables 4, 5, 6 to part 679 in the caption, remove the text, ''227.12(a)(2)'' and add in its place, ''223.202''.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

43. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

§ 697.2 [Amended]

44. In § 697.2, the definition ''Approved TED'', remove the text, ''217.12,'' and add in its place, ''222.102,''.

45. In § 697.2, in the definition for ''Flynets'', remove the text, ''227.72(e)(2)'' and add in its place, ''223.206'', wherever it occurs.

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Part III

Department of Health and Human Services

Office of Public Health and Science: Family Planning Nurse Practitioner and Specialty Training Program Funds Availability Announcement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Funds for Family Planning Nurse Practitioner and Specialty Training Program

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OFT) of the Office of Population Affairs requests applications for grants under the Family Planning Service Training Program authorized under section 1003 of the Public Health Service (PHS) Act. Funds are available to train health care practitioners in order to maintain the high level of performance of family planning service projects funded under Title X of the PHS Act. The training programs to be funded will provide skill-based knowledge for registered professional nurses, qualified nurse practitioners, physicians assistants, Doctors of Medicine, and Doctors of Osteopathy employed in Title X clinics, and will enable Title X service providers to improve the delivery of family planning services to persons from low-income families and other persons desiring such services.

DATES: To receive consideration, applications must be received by the Office of Grants Management, Office of Population Affairs no later than May 24, 1999.

ADDRESSES: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200 West, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: *Program Requirements:* Ms. Susan Moskosky, Acting Deputy Director, Office of Family Planning, at (301) 594–4008.

Administrative and Budgetary Requirements: Office of Grants Management, Office of Population Affairs, at (301) 594–4012.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning services personnel. (Catalog of Federal Domestic Assistance Number 93.260). This notice announces the availability of approximately $1,800,000 in funding and solicits applications for grants for two training projects, each of which will serve states in five U.S. Department of Health and Human Services regions, as described below.

Program Background

Title X of the PHS Act, enacted by Pub. L. 91–572, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants to ''assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).'' Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities to provide the training for personnel to carry out the family planning services program. The regulations set out at 42 CFR, part 59, subpart C, govern grants for family planning services training. Prospective applicants should refer to the regulations in their entirety.

The Office of Family Planning in the Office of Population Affairs, through the Title X program, has funded certificate nurse practitioner programs since the early 1970s to prepare registered professional nurses to serve the clinical needs of clients in Title X agencies. More than 5,000 family planning and women's health nurse practitioners have been prepared in the Title X-supported nurse practitioner training since that time. Many changes are occurring, however, that are having an impact on the type of training that will be needed for nurse practitioners and other clinical providers in the Title X delivery system, both now and in the future.

While it is recognized that an estimated 80 percent of the clinicians currently providing services in Title X clinics are certificate prepared women's health nurse practitioners, there has been a precipitous and sustained decline in the number of applicants for Title X nurse practitioner training over the past five years. In the past two years, several of the Title X-supported nurse practitioner training programs have canceled classes due to an insufficient number of applicants.

During this same time period, only one of the five Title X-supported nurse practitioner training programs has been able to recruit the number of trainees to which they committed in the applications for funding. This decline in the number of applicants and trainees has resulted in a dramatic increase in the average cost per student to the Title X program.

A majority of the states (26) currently require a masters degree for nurse practitioner practice or for prescriptive authority. Beginning January 1, 2007, a masters degree in the specialty area will be required for nurse practitioners to be eligible for the women's health nurse practitioner certification examination. The change in the certification eligibility requirement will mean that certificate training of women's health nurse practitioners will no longer be a viable option. Compounding these factors are the changes occurring within the health care delivery system and the increasing complexity of reproductive health and other health issues requiring a broader understanding of related health complications (e.g., hypertension, diabetes, HIV-related complications, etc.).

The declining number of applicants for traditional certificate Title X nurse practitioner training along with the escalating costs of providing such training dictates a change in the approach to training clinical providers for the Title X system. Other factors that reinforce the need for a change in approach include changing State requirements and the availability of already credentialed, more broadly prepared clinical providers, such as masters prepared family or adult nurse practitioners, physicians assistants, Doctors of Medicine or Doctors of Osteopathy. The more broadly prepared clinical providers could benefit from in-depth family planning and women's health information and clinical training In an effect to maintain the quality of family planning service delivery in the Title X system, a strategy for providing this specialized family planning and women's health information to broadly prepared health care providers will be addressed by applicants for funding under this announcement.

It is recognized that because Title X nurse practitioner training has existed in its current form for many years, a period of time will be needed to make necessary adjustments in order to minimize disruption. Therefore, the changes in training health care providers for the Title X service delivery system that are indicated in this announcement will be phased in over the three year project period.

In recognition of the changes indicated in this announcement and the concomitant concern that employment of masters-prepared nurse practitioners will increase the cost of providing clinical services, the Office of Family Planning will make additional funds available to Title X service provider grantees to help offset these additional expenditures. A mechanism will be developed to ensure maintenance and retrieval of previous nurse practitioner training program graduate records.

Purpose of the Grant

The two training grants to be funded under this announcement will each provide training services in five of the Department's regions as follows:

(1) One grant with a range of $300,000–$1,000,000 to train registered professional nurses and health care practitioners, defined as: qualified nurse practitioners, as defined below; physicians assistants; Doctors of Medicine; and, Doctors of Osteopathy, from the following cluster of regions:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont);

Region II (New Jersey, New York, Puerto Rico and the Virgin Islands);

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia);

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee);

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin).

(2) One grant with a funding range of $300,000–$1,000,000 to train registered professional nurses and health care practitioners, defined as: Qualified nurse practitioners, as defined below; physicians assistants; Doctors of Medicine; and, Doctors of Osteopathy, from the following cluster of regions:

Region VI (Arkansas, Louisiana, New Mexico, Texas and Louisiana);

Region VII (Iowa, Kansas, Missouri and Nebraska);

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming);

Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Federated States of Micronesia, Republic of Marshall Islands, Commonwealth of Northern Mariana Islands, Republic of Palau and Guam);

Region X (Alaska, Idaho, Oregon and Washington).

For the purpose of this announcement, ''qualified nurse practitioner'' is defined as: registered professional nurse who is authorized by the State in which services are furnished to practice as a nurse practitioner in accordance with state law.

The training programs funded under this announcement will provide two tracks of training: (1) During Year One of the project period, applicants will be responsible for design and delivery of full course, on-site training to prepare registered professional nurses to function in an advanced nursing role as obstetric-gynecologic or women's health nurse practitioners; and (2) beginning Year Two and through Year Three of the project period, applicants will be responsible for design and delivery of a speciality course for ''health care practitioners,'' defined as: qualified nurse practitioners, physicians assistants, Doctors of Medicine and Doctors of Osteopathy. The speciality course will include didactic information and clinical instruction specific to family planning and women's health for health care practitioners who are seeking additional training in these areas. The purpose of both of these training efforts is to enhance the quality of family planning and women's health services in the Title X delivery system.

The successful applicant will be responsible for all costs associated with training program administration and management, and for training costs directly associated with preparation of trainees (e.g., educational materials, classroom and clinical training sites, etc.). Trainees or employers of trainees will be responsible for all expenses incurred in association with transportation, housing and personal expenses.

Trainees from Title X funded agencies will receive primary consideration to attend the training program specified for their region. Training applicants may also apply for admission to the alternate program, and may be accepted on a space available basis.

Role and Operation of the Training Program

Traditional Full Course Nurse Practitioner Training Program

During Year One of the project period, the successful applicant will be responsible for the design and delivery of a high quality curriculum for a certificate women's health nurse practitioner program specific to the education and role of the nurse practitioner. The training curriculum must include content sufficient to prepare graduates to perform the full range of services required for nurse practitioners in the Title X clinic system. The training program must be accredited as a nurse practitioner program by a national nursing accrediting body, and program graduates must be eligible for national certification.

The training project may not hold more than three full course, on-site classes during Year One of the project period. Each full course may not exceed 16 weeks of on-site course work, with a preceptorship of approximately five and one-half months following the on-site course work. The number of Title X-supported students may not exceed 25 per class. The average cost per Title X-supported student may not exceed $12,000. No traditional full course nurse practitioner training may be initiated after the beginning of Year Two of the project period. A thorough report of the full course training program must be completed and submitted to the Office of Family Planning three months after the completion of the last full course training session.

Specialty Training Course

During Year Two of the project period, the successful applicant will be required to design and deliver a family planning/women's health specialty course for health care practitioners (as defined in Purpose of the Grant). Development of the specialty course should begin during Year One of the project period and may continue during Year Two. A minimum of one specialty course must be held during Year Two of the project period. The number of specialty courses to be offered during Year Two may not exceed three. The number of specialty courses to be offered during Year Three will be negotiated during the last three months of Year Two. Each specialty course must not exceed six weeks in length, and will include both didactic and clinical course work. A combination of on-site and distant learning approaches may be used. Prior to implementation, the curriculum and admissions criteria for candidates (including prerequisite qualifications) for the specialty course must be submitted to the Office of Family Planning (OFP) for review and approval. The number of Title X-supported trainees may not exceed 15 per class. The cost per Title X-supported student for the specialty course may not exceed $4,000.

Project Requirements and Management

Successful applicants will be required to work closely with Central and Regional Office staffs and a network of agencies, including Title X service providers and training advisory committees. The design of both the full course and the specialty course, including the curriculum, must be consistent with Title X statute, regulations and priorities.

Successful applicants will be responsible for the overall management of the training activities within the geographic area for which the grant is made. This responsibility includes:

(1) Meeting national or State recognition requirements as a provider of continuing education through a national nursing organization or one of its constituents, and facilitating the award of continuing education units to

nurse practitioner trainees, where appropriate;

(2) Developing an annual training plan which reflects an assessments of the needs of Title X service grantees for both types of training activities in the regions for which the grant is awarded;

(3) Maintaining data on training activities and trainees sufficient to allow evaluation by credentialing and licensing bodies and by the Office of Family Planning, Office of Population Affairs;

(4) Submitting to the Office of Family Planning a thorough report on the traditional nurse practitioner training course, three months after the completion of the last full course training session, including data on training activities and trainees;

(5) Developing and implementing an evaluation plan for the specialty course within Year Two of the project period. A thorough evaluation report of the specialty course, including data on trainees, will be submitted to OFP at the completion of Year Two of the project period and six months prior to the end of Year Three of the project period;

(6) Making available at cost all materials developed with Title X funds to other title X projects upon request; and

(7) Participating in at least one meeting with the Office of Family Planning annually;

Application Requirements: Any public or private nonprofit organization is eligible to apply for a grant. If the successful applicant is not physically located within one of the applicable regions, a major training facility of the organization must be located within the cluster of regions the applicant will serve.

Applications must be submitted on the forms supplied (PHS–5161–1, Revised 5/96) and in the manner prescribed in the application kits available from the Office of Grants Management. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

A copy of Title X legislation and regulations that govern this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations and other information included in this announcement to guide them in developing their applications. Applications should be limited to 60 double-spaced pages, not including appendices providing curriculum vitae, curriculum, or statements of organizational capabilities. Awards will be made only to those applicants who have met all applicable requirements.

Applications must be received on or before the deadline date to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. Private metered postmarks will not be accepted as proof of timely mailing. Applications which are received by the Office of Grants Management after the deadline date will not be accepted for review. Applications which do not conform to the requirements of this program announcement or meet the applicable parts of 42 CFR part 59, subpart C will not be accepted for review. Applicants will be so notified and the applications will be returned.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and making the final funding decisions.

Application Consideration and Assessment: Eligible applications will be reviewed by a panel of independent reviewers and will be assessed against the following criteria:

(1) The extent to which the proposed training program will increase the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services, as evidenced by the applicant's ability to address the requirements set out under ''Role and Operation of the Training Program.'' (25 points);

(2) The extent to which the proposed training program promises to fulfill the family planning service delivery needs of the area to be served, as evidenced by the applicant's ability to address: (a) The extent to which the training curricula and objectives will improve the family planning service delivery skills of registered nurses and other health care practitioners (as defined in ''Purposes of the Grant'') providing family planning services; (b) the extent to which the training program proposes appropriate strategies to recruit and train nurse practitioners and other health care practitioners requiring specialized family planning training; and, (c) the factors set out at 42 CFR 59.206(a)(2)(i)–(iv). (25 points);

(3) The capacity of the applicant to make rapid and effective use of the training grant (10 points);

(4) The administrative and management capacity and competence of the applicant (15 points);

(5) The competence of the project staff in relation to the services to be provided, including demonstrating that project staff, meet educational and experience requirements of appropriate credentialing bodies. (15 points);

(6) The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 59.205, including the applicant's presentation of the project's objectives, the methods of achieving project objectives, the ability to involve providers and the regional office, and the results or benefits expected. (10 points).

In making grant award decisions, the Deputy Assistant Secretary for Population Affairs (DASPA) will fund those projects which will in her judgement best promote the purposes of section 1003 of the Act, within the limits of funds available for such projects.

Grants will be approved for project periods of up to three years and will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

Review Under Executive Order 12372: Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOC's which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by applicant regarding the submission to the relevant SPOC. The SPOC comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 20 West, Bethesda, MD 20814. Such comments must be received by the Office of Population Affairs within 60 days of the closing date listed under ''Dates'' above.

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded,

the purposes of the grant, and terms and conditions of the grant award.

Authority: 43 U.S.C. 300(a)).

Dated: March 15, 1999.

Denese O. Shervington,

Deputy Assistance Secretary for Population Affairs.

[FR Doc. 99–7000 Filed 3–22–99; 8:45 am]

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Tuesday
March 23, 1999

Part IV

Department of Health and Human Services

Centers for Disease and Prevention

Annual Submission of the Quantity of Nicotine Contained in Smokeless Tobacco Products Manufactured, Imported, or Packaged in the United States Requirement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice Regarding Requirement for Annual Submission of the Quantity of Nicotine Contained in Smokeless Tobacco Products Manufactured, Imported, or Packaged in the United States

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice establishes a uniform protocol for the analysis of nicotine, total moisture, and pH in smokeless tobacco products. This protocol was designed to implement the requirement of the Comprehensive Smokeless Tobacco Health Education Act (CSTHEA) of 1986 (15 U.S.C. 4401 *et seq.*, Pub. L. 99–252), which requires that each entity manufacturing, packaging, or importing smokeless tobacco products shall annually provide the Secretary of Health and Human Services (HHS) with a specification of the quantity of nicotine contained in each smokeless tobacco product.

DATES: The first report of information is due June 30, 1999, with subsequent submissions due by March 31 of each year.

ADDRESSES: The information shall be submitted to: Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Atlanta, GA 30341–3724.

FOR FURTHER INFORMATION CONTACT: Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, telephone: (770) 488–5701.

SUPPLEMENTARY INFORMATION: According to a 1986 report of an Advisory Committee to the Surgeon General, smokeless tobacco represents a significant health risk, is not a safe substitute for cigarette smoking, can cause cancer and a number of noncancerous oral conditions, and can lead to nicotine addiction.

The Centers for Disease Control and Prevention's (CDC) Office on Smoking and Health (OSH) has primary responsibility for the Department of Health and Human Services' (HHS) tobacco and health program. The overall goal of this program is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education, and research.

HHS uses the information collected to exercise its authority under CSTHEA to conduct research on the addictive nature of nicotine and general health effects of using smokeless tobacco. Nicotine data will provide a more complete picture of the addictive nature of smokeless tobacco products. Also, as authorized in the statute, HHS may report to the Congress information regarding its current and proposed research relative to nicotine levels in smokeless tobacco products. CSTHEA further requires that individuals who manufacture, package, or import smokeless tobacco products report to HHS the list of ingredients added to tobacco in the manufacture of such products, and this requirement has been implemented by a previous notice (59 FR 4714,).

In 1989 the smokeless tobacco industry submitted a business review letter to the Department of Justice (DOJ), in accordance with 28 CFR 50.6. This letter requested approval of a collaborative industry effort to develop a uniform analytical protocol for determining the nicotine and moisture content of smokeless tobacco products.

In January 1993, DOJ extended permission to the smokeless tobacco industry to develop a uniform analytical protocol for this purpose. A work group representing the 10 major domestic manufacturers of smokeless tobacco was convened on July 7, 1993. The workgroup developed and submitted to CDC for approval the ''Protocol for Analysis of Nicotine in Smokeless Tobacco Products.'' The protocol was revised by CDC based on individual comments from peer reviewers and the National Center for Environmental Health, CDC. The revised protocol, ''Protocol for Analysis of Nicotine, Total Moisture, and pH in Smokeless Tobacco Products,'' is hereafter referred to as the ''protocol.''

On May 2, 1997, a notice (62 FR 24115) was published in accordance with the Paperwork Reduction Act to solicit public comment on the proposed collection of data. A notice was also published (62 FR 24116, May 2, 1997) to solicit public comment on the protocol. The protocol consists of standard laboratory methods to measure nicotine, moisture, and pH in smokeless tobacco products, and an equation (Henderson-Hasselbalch) to calculate un-ionized nicotine. Nicotine is the major alkaloid in tobacco and the drug in tobacco that causes addiction. In the protocol, moisture is referred to as total moisture because the method measures the amount of water and tobacco constituents in a smokeless tobacco product that are volatile at temperatures of 99 degrees centigrade. pH is defined as the negative logarithm of the molar concentration of hydrogen ions in an aqueous solution and is a quantitative measure of acidity or alkalinity. The degree of nicotine ionization is calculated from the Henderson-Hasselbalch equation. Un-ionized nicotine is known to be the form of nicotine absorbed most easily in the mouth. This protocol will provide CDC with information on levels of nicotine found in smokeless tobacco products manufactured, packaged, or imported during the previous calendar year. The schedule for reporting this information to CDC corresponds to the reporting of ingredients added to tobacco in the manufacture of smokeless tobacco products November 8, 1994 (59 FR 55670,).

Following public request, on June 2, 1997, a notice (62 FR 29729) was published extending the comment period on the proposed protocol by an additional 30 days to July 2, 1997. A summary of the comments received and CDC's response follows.

One respondent, on behalf of several smokeless tobacco manufacturers, had several comments regarding the collection of data. The respondent asserted that the protocols exceeded statutory authorization by collecting pH and free base (hereinafter referred to as ''un-ionized'', as reflected in the revised protocol) nicotine. Furthermore, the respondent felt that the legislative history of CSTHEA contemplates the reporting of nicotine content alone.

It is CDC's belief that the collection of pH of smokeless tobacco products and the un-ionized nicotine content of each is authorized by section 4 of CSTHEA. There is ample scientific evidence that mere quantity of nicotine alone is insufficient in determining its effect on a user; knowledge of pH and un-ionized nicotine content of the overall nicotine quantity is essential in determining the rate of nicotine absorption. pH and un-ionized nicotine content are essential factors affecting nicotine bioavailability. Furthermore, Congress has never defined exactly what it meant by ''quantity of nicotine'' in section 4(b) of CSTHEA. In light of ample scientific evidence indicating the importance of pH and un-ionized nicotine content in assessing the overall quantity of nicotine, CDC's interpretation of its statutory authority is clearly permissible.

It is CDC's belief that the legislative history provides support for requiring the reporting of moisture, pH, and un-ionized nicotine content. The Senate

Report accompanying and establishing Congress' views on CSTHEA repeatedly emphasized that ''it is essential that we inform the public of the health effects of smokeless tobacco use and continue research on such health effects as expeditiously as possible'' (Senate Report 99–209, Dec. 4, 1985, p.13). Since scientific evidence has established that knowledge of pH and un-ionized nicotine content is essential in determining the health effects of smokeless tobacco, the reporting of these elements is supported by the legislative history.

The respondent also commented that CDC failed to comply with procedural obligations in violation of 5 USC § 551 *et seq.*, the Administrative Procedure Act (APA). Specifically, the respondent claimed that CDC failed to provide opportunity for advance review and comment and failed to inform the public of the true nature of the proposed protocol.

CDC feels that the notice given to the tobacco manufacturers was clearly adequate under the APA. CDC's purpose in publishing the protocol in the **Federal Register** was to solicit comments from the public. This is the appropriate time for the manufacturers to review the protocol and relay their comments to CDC, not before publication. As a matter of courtesy, CDC has provided the manufacturers with a copy of draft protocols before publication. CDC did that here as well, for the tobacco companies were given an advance copy of the protocol before formal publication. Therefore, CDC did provide the tobacco companies with advance knowledge of the protocol, even though such notice was not required.

Furthermore, CDC has not failed to inform the public of the true nature of its proposed protocol. CDC sufficiently apprised the public of the agency's legal authority to issue the proposed protocol, for it explicitly states that it is operating under the authority of CSTHEA. Thus, the public is on sufficient notice of the legal authority under which CDC issued the proposed protocol, and has had full opportunity to comment.

CDC is also not required to lay out potential criticisms of its scientific positions in its notice and request for public comment. The purpose of the notice and comment period is to provide interested parties with the opportunity to conduct their own analysis of the merits of the protocol, and to provide scientific or other criticisms, if desired. CDC has clearly stated the terms and substance of its proposed protocol as to provide the public with sufficient opportunity to comment.

This respondent also commented that CDC failed to meet the requirements of the Paperwork Reduction Act by failing to provide the public with an accurate estimate of the burden of compliance. CDC disagrees. CDC based its original estimate on the figures that were submitted by the manufacturers themselves. Moreover, the 60-day notice and comment period is designed to solicit comment on the accuracy of the agency's estimate of the burden of the proposed collection of information. 44 U.S.C. 3506(c)(2)(A)(ii). The tobacco manufacturers felt that the estimate of burden had changed and commented as such at that time. CDC then sought revised estimates from the manufacturers. Only one manufacturer responded to the request for this information. Based on this response, CDC conducted new analyses and revised its estimate of burden accordingly. Thus, CDC clearly complied with the Paperwork Reduction Act's requirements.

CDC also received comments regarding the protocol, which raised technical and scientific concerns regarding collection and calculation of the requested information. Several respondents supported the protocol requirement of reporting not only moisture and nicotine content but also pH and unionized nicotine levels. Support for this aspect of the protocol was based on scientific evidence that the nicotine-specific effects of a given amount of smokeless tobacco depend as much on the pH of the product as on the nicotine content itself. CDC agrees with this scientific observation regarding the utility of determining smokeless tobacco pH and calculating unionized nicotine levels in smokeless tobacco products.

One respondent, on behalf of several smokeless tobacco manufacturers, stated that the protocols for nicotine analysis and total moisture determination are scientifically flawed. Specifically, the respondent stated that the Standards Addition Assay is flawed and unnecessary, that the protocol specifies an unavailable vegetable-based matrix, that triplicate determinations are unnecessary, and that the protocol requires smokeless tobacco manufacturers to use a protocol specific to cigarettes.

With respect to the Standards Addition Assay, CDC reaffirms the function of the Standards Addition Assay and disputes the inadequacies of the extraction testing offered by the respondent as a rationale for eliminating the Standards Addition Assay. CDC revised the protocol to facilitate preparation of a standard curve for the Standards Addition Assay that encompasses the range of values expected from adding known concentrations of nicotine to the smokeless tobacco product. Also, CDC revised the protocol to specify when the Standards Addition Assay is to be conducted by the testing facility.

Regarding use of a vegetable-based matrix, CDC acknowledges that a nicotine-free tobacco surrogate is not readily available to serve as a vegetable-based matrix; that is why the protocol thus specifies adding known concentrations of nicotine to the smokeless tobacco product when performing the Standards Addition Assay. CDC revised the text in Endnote 1 of the protocol to eliminate the phrase ''routine testing of random blind samples.''

Regarding triplicate determinations, CDC asserts that the potential sources of smokeless tobacco product variability necessitate triplicate determinations for evaluation of precision. In response to the comment that CDC was attempting to ''bind the manufacturers'' to a cigarette testing protocol in the smokeless tobacco testing protocol, CDC clarifies that the disputed protocol is a sampling protocol, not a testing protocol. Therefore, testing facilities should make use of the document as reference material. However, for clarification, Endnote 11 of the protocol (Endnote 10 of the public comment version of the protocol) was revised to read—''The testing facility must ensure that samples are obtained through the use of a survey design protocol for sampling 'at one point in time' at the factory or warehouse. The survey design protocol must address short-, medium-, and long-term smokeless tobacco product variability (e.g., variability over time and from container to container of the tobacco product) in a manner equivalent to that described for cigarette sampling in Annex C of ISO Protocol 8243.''

This respondent also commented that the protocol for pH measurement is scientifically flawed. Specifically, the respondent states that the procedure is based on a nonvalidated protocol, that an inappropriate volume of liquid is specified, that proper calibration of instruments has not been incorporated in the protocol, that temperature is not considered in the protocol, and that multiple pH measurements are unnecessary.

CDC disagrees that the protocol for pH measurement is scientifically flawed. The protocol to determine smokeless tobacco pH is based on the validated protocol published by Henningfield et

al. (1995), which also provides the rationale for the quantity of smokeless tobacco and the volume of liquid. Parameters that can be standardized (sample size, sample preparation, quantity and purity of standard and reagents, instrumentation, measurement time and conditions, etc.) are specified in the protocol. Of note, the Henningfield et al. (1995) reference was provided in the version of the protocol that the respondent received for comment.

CDC agrees that careful calibration across the range of unknown values to be measured is needed. The protocol was revised to read—''Measure pH of sample after a two-point calibration of the pH meter to an accuracy of two decimal places using standard pH buffers (4.01 and 7.00 or 7.00 and 10.00) that will encompass the expected pH value of the smokeless tobacco product.''

CDC also agrees that conditions such as sample preparation, sample size, extraction time, volume and purity of the water used, and temperature must be controlled during determination of the pH of a smokeless tobacco product. The protocol was revised to specify room temperature for nicotine extraction and pH determination.

As described above, CDC recognizes that there are several potential sources of smokeless tobacco product variability that necessitate triplicate determinations for evaluation of precision. With respect to pH determination, CDC recognizes the need for multiple measurements to determine if pH values for the smokeless tobacco product vary systematically with time. For edification, the protocol was revised to read—''The first time pH values are determined for each lot of a smokeless tobacco product, measure the pH of the smokeless tobacco product at 5, 15, and 30 minutes. If there is no systematic variation in pH values with time, all subsequent pH determinations for the lot are made at 5 minutes. If there is systematic variation in pH values, continue to measure the pH of the smokeless tobacco product until the pH value is stable and does not vary more than 10% over 15 minutes. Report the final pH value.''

This respondent further asserted that the ''smokeless tobacco pH'' theory has been discredited. In summary, the respondent states that calculation of un-ionized nicotine is based on a discredited scientific theory and that the ''smokeless tobacco pH'' theory ignores the chemical, biological, and behavioral factors that govern absorption of smokeless tobacco.

Un-ionized nicotine is known to be the form of nicotine most easily absorbed in the mouth. pH determination is a component of the protocol to allow calculation of un-ionized nicotine. The degree of nicotine ionization is calculated from the Henderson-Hasselbalch equation. In a document written at the request of the United States Tobacco Company, Dr. Jeffrey R. Idle recognizes pH as one of the ''chemical factors which determine the absorption of a substance dissolved in water across a biological barrier with which the solution is in intimate contact.'' In the same document Dr. Idle concludes that ''The concept of a pH for snuff depends upon a standardized and validated pH assay for aqueous tobacco suspensions' and that ''The concept of pH for a moist solid such as tobacco can only apply to a solution derived from a stirred suspension of a standardized amount of tobacco in a standardized volume of water.''

It is the intent of the protocol to provide smokeless tobacco manufacturers with a ''standardized measurement'' of pH. Parameters that can be standardized for pH, moisture, and nicotine determination (sample size, sample preparation, quantity and purity of standards and reagents, instrumentation, measurement time and conditions, etc.)—not random conditions or circumstances unique to each smokeless tobacco user such as ''residues of beverages'' in the mouth of the smokeless tobacco user (chemical factors), ''surface area of the absorptive tissues'' (biological factors), and ''expectoration'' or ''swallowing'' (behavioral factors)—are specified in the protocol. In addition, the protocol's methodology is supported by the conclusions presented in a recent review article that ''pH is a major determinant of nicotine absorption across mucosal tissues'' in the mouth and that other ''behavioral and biological'' factors probably have ''little effect on the rate of nicotine absorption'' (Tomar and Henningfield, Tobacco Control 1997, 6:219–225).

Information Collection Provisions

This notice contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and assigned OMB Action Notice number 0920–0444 (expiration 01/31/2002). The title description, and respondent information are shown below with an estimate of the annualized costs and burden hours.

Title: Quantity of Nicotine Contained in Smokeless Tobacco Products Manufactured, Imported, or Packaged in the United States.

Description: The Comprehensive Smokeless Tobacco Health Education Act (CSTHEA) of 1986 requires HHS to collect this information. HHS is authorized under CSTHEA to conduct research on the addictive nature of nicotine and general health effects of using smokeless tobacco.

Description of Respondents: Businesses or other For-Profit Organizations.

Estimates of Annualized Burden Hours and Costs: The average annualized total cost to industry is $23,419. This is based on an annualized estimated cost for 11 companies at $2,129 per company. Some companies may choose to contract with an independent laboratory while others may elect to complete the determinations in-house. For those companies choosing to conduct the testing in-house, approximately US$60,000 would be required to purchase the necessary equipment, assuming none of the equipment was previously owned.

The annual response burden to the industry is estimated at 170 hours per smokeless tobacco company. Thus, for the 11 respondents, the hour-burden is 1,870 hours.

Respondents	Number of re-spond-ents	Avg. number of responses per respond-ent	Avg. hours per respondent	Estimated total hours	Avg. cost per respondent	Estimated total cost
Tob. Mfrs.	11	1	170	1,870	$2,129	$23,419

Procedures to maintain confidentiality of nicotine, pH, and moisture data: As provided by CSTHEA, HHS is required to treat the nicotine, pH, and moisture information as a trade secret or confidential in accordance

with 5 U.S.C. 552(b)(4)and 18 U.S.C. 1905. CSTHEA also requires HHS to establish written procedures to assure the confidentiality of the information provided. Consistent with these statutory provisions, HHS has developed strict procedures for treating and protecting relevant documents, including secured file storage and strictly-limited access to the information. The procedures that are applicable to the nicotine content of smokeless tobacco products comport with those already in place for protecting the confidential lists of ingredients in cigarettes and smokeless tobacco products. These procedures have proven workable, effective, and acceptable to the companies required to report the confidential information. The procedures, Guidelines for Maintaining and Releasing Privileged Information Obtained in Accordance With Sec. 4(b)(2)(a) of Public Law 99–252 (15 U.S.C. 4403), were previously published in the February 1, 1994, **Federal Register** (59 FR 4714), and are available from CDC's Office on Smoking and Health upon request.

Dated: March 17, 1999.

Martha Katz,

Acting Director, Centers for Disease Control and Prevention.

Protocol for Analysis of Nicotine, Total Moisture, and pH in Smokeless Tobacco Products

I. Requirements [1, 2]

A. Reagents [3]

1. Sodium hydroxide (NaOH), 2N
2. Methyl t-butyl ether (MTBE)
3. (-) -Nicotine (Fluka 72290) >99% purity [4, 5]
4. Quinoline (Aldrich)
5. Standard pH buffers; 4.01, 7.00, and 10.00
6. Deionized distilled water

B. Glassware and supplies

1. Volumetric flasks, class A
2. Culture tubes, 25 mm x 200 mm, with Teflon-lined screw caps
3. Pasteur pipettes
4. Repipettors (10 mL and 50 mL)
5. Linear shaker (configured to hold tubes in horizontal position) [6, 7]
6. Weighing dishes, aluminum
7. Teflon-coated magnetic stirring bars
8. Polypropylene containers, 50 mL

C. Instrumentation

1. Robot Coupe Model RSI 2V Scientific Batch Processor.
2. Capillary gas chromatograph, Hewlett Packard, Model 6890, with split/splitless injector capability, flame ionization detector, and a capillary column (Hewlett Packard HP–5, Crosslinked 5% PH ME Siloxane, 30 m length x 0.32 mm ID, film thickness 0.25 or 0.52 μm).
3. Orion Model EA 940 pH meter equipped with Orion 8103 Ross combination pH electrode.

D. Additional Equipment

Forced-air oven, Fisher Isotemp®, regulated to 99 ± 1.0°C. Suggested dimensions: 18 x 18 x 20.″

E. Chromatographic Conditions [8, 9]

1. Detector temperature: 250°C
2. Injector temperature: 250°C
3. Flow rate at 100°C—1.7 mL/min; with split ratio of 40:1 [10]
4. Injection volume: 2 μl
5. Column conditions: 110–185°C at 10°C min $^{-1}$; 185–240°C at 6°C min $^{-1}$, hold at final temperature for 10 min.

F. Sample Preparation [11]

There exist six different categories of commercial smokeless tobacco products:

1. Dry snuff;
2. Moist (wet) snuff;
3. Moist (wet) snuff portion packs;
4. Plug;
5. Twist; and
6. Loose leaf.

Because of their physical characteristics, samples of three of the six product categories must be ground before nicotine, total moisture, and pH analyses can be conducted. The objective of grinding the samples is to obtain a homogeneous sample with particles measuring approximately 4 mm. Grinding to achieve this particle size should take no more than 3 minutes. To ensure proper grinding and an adequate amount of the ground sample for analysis, the minimum sample size of all commercial products to be ground should not be less than 100 grams.

To ensure precision of analyses for nicotine, total moisture, and pH, the samples that require grinding should be ground using a Robot Coupe Model RSI 2V Scientific Batch Processor or its equivalent. This is a variable speed (0 to 3000 RPM) processor. The variable speed motor is required to ensure proper grinding of the tobacco tissues (and in the case of pH determination, the moist (wet) snuff portion pack). Elevated temperatures can result in moisture loss and an underestimated value for moisture content. Hence, care must be taken during grinding to avoid elevated temperatures. The bowl should be cleaned after each grinding to obtain accurate results.

1. Dry snuff. Dry snuff samples do not need to be ground since the product is a powder. The sample must be thoroughly mixed before weighing for nicotine, total moisture, and pH analysis.

2. Moist (wet) snuff. Moist (wet) snuff samples do not need to be ground. The sample must be thoroughly mixed before weighing for nicotine, total moisture, and pH analysis.

3. Moist (wet) snuff portion packs. The tobacco contents of the moist (wet) snuff portion packs do not need to be ground for nicotine, total moisture, or pH analysis. The tobacco packaging material (the ''pouch'') should be separated from the tobacco and ground to obtain particles measuring approximately 4 mm for pH analysis. The tobacco of the moist (wet) snuff portion pack and the ground pouch are combined and thoroughly mixed before pH analysis.

4. Plug tobacco. Break or cut apart plugs and add in portions to grinder at 2000 RPM. Reduce RPM or stop grinding if sample bowl becomes warm. Pulse the Robot Coupe, when needed, to complete grinding. Grind samples until approximately 4 mm in size. The total grinding time should be no more than 3 minutes.

5. Twist tobacco. Separate twists, add to grinder and grind at 2000 RPM. Reduce RPM or stop grinding if sample bowl becomes warm. Continue grinding until sample particles are approximately 4 mm in size. The total time for grinding should be no more than 3 minutes.

6. Loose leaf. Grind in the same manner as described in 4 and 5 to obtain product with particle size of approximately 4 mm.

II. Nicotine Analysis [12]

A. Calibration Standards

1. Internal Standard (IS)

Weigh 10.00 grams of quinoline, transfer to a 250 mL volumetric flask and dilute to volume with MTBE. This solution will be used for calibration of the instrument for the nicotine calibration curve (II.A.2), for the standards addition assay (II.B), and for preparation of the extracting solution (II.D).

2. Nicotine Calibration Curve

a. Weigh 1.0000 gram of nicotine into a clean, dry 100 mL volumetric flask and dilute to volume with MTBE. This gives a nicotine concentration of 10 mg/mL for the stock solution.

b. Accurately pipette 0.5 mL of IS from stock solution (II.A.1) to five clean, dry 50 mL volumetric flasks. To prepare a nicotine standard corresponding to a concentration of 0.8 mg/mL, pipette exactly 4.0 mL of the nicotine standard

(II.A.2.a) to a 50 mL volumetric flask containing the internal standard and dilute to volume with MTBE. To obtain nicotine concentrations equivalent to 0.6, 0.4, 0.2, and 0.1 mg/mL, pipette precisely 3.0, 2.0, 1.0, and 0.5 mL, respectively, of the nicotine standard into the four remaining flasks and dilute to volume with MTBE.

c. Transfer aliquots of the five standards to auto sampler vials and determine the detector response for each standard using gas chromatographic conditions described in I.E.

d. Calculate least squares line for linear equation from these standards by obtaining the ratio of $Area_{nicotine}/Area_{IS}$. This ratio will be the Y value and the concentration of nicotine will be the X value for determining the linear equation of the line (Equation 1):

Equation 1:
$Y = a + bX$;

Where:

X = Concentration of nicotine in mg
$Y = Area_{nicotine}/Area_{IS}$
a = intercept on the ordinate (y axis)
b = slope of the curve

The final result will be reported in the following units:

Concentration of nicotine = mg of nicotine/gram of tobacco sample.

e. Determine the recovery of nicotine by pipetting 10 mL of the 0.4 mg/mL nicotine standard to a screw capped tube containing 1.0 mL of 2 N NaOH. Cap the tube. Shake the contents vigorously and allow the phases to separate. Transfer an aliquot of the organic phase to an injection vial and inject. Calculate the concentration of nicotine using the equation of the line in II.A.2.d above. This should be repeated two more times to obtain an average of the three values. The recovery of nicotine can be obtained by using the following equation:

Equation 2:
$Recovery = Nicotine_{calculated}/Nicotine_{actual}$

B. Standards Addition Assay

Prior to analyzing a smokeless tobacco product for nicotine content, the testing facility must validate the system to verify that matrix bias is not occurring during nicotine extraction. This is done by analyzing the nicotine calibration standards in the same vegetable matrix as the smokeless tobacco. The first time each lot of a smokeless tobacco product is evaluated, the Standards Addition Assay will be performed, and documentation of its performance and of the nicotine concentrations selected for the standard curve (II.B.2) will be submitted to the Centers for Disease Control and Prevention.

1. Using an analytical balance, accurately weigh 1.000 ± 0.020 gram of the homogeneous, prepared tobacco sample into a culture tube. Repeat this five times for a total of 6 culture tubes containing the smokeless tobacco product. Record the weight of each sample.

2. Prepare a five-point standard curve for the Standards Addition Assay. The standard curve must consist of nicotine concentrations that encompass the range of values expected from adding known concentrations of the nicotine standard (II.A.2.a) to a measured quantity of the smokeless tobacco product (1.000 ± 0.020 gram, described in II.B.1.). The sixth culture tube is not supplemented with nicotine and serves as an analytical blank. Allow the samples to equilibrate for 10 minutes.

3. Pipette 5 mL of 2 N NaOH into each tube. Cap each tube. Swirl to wet sample and allow to stand 15 minutes.[13]

4. Pipette 50 mL of extraction solution (II.D.1) into each tube. Cap each tube and tighten.[14]

5. Place tubes in rack(s), place racks in linear shaker in horizontal position and shake for two hours.

6. Remove rack(s) from shaker and place in vertical position to allow the phases to separate.

7. Allow the solvent and nicotine supplemented samples and the blank to separate (maximum 2 hours).

8. Transfer aliquots of the five standards and the blank from the extraction tubes to sample vials and determine the detector response for each using gas chromatographic conditions described in I.E.

9. Subtract the $Area_{nicotine}/Area_{IS}$ of the blank from the $Area_{nicotine}/Area_{IS}$ of each of the standards.

10. Calculate least squares line for linear equation from the corrected standards as described above (Equation 1) in II.A.2.d.

The final corrected result will be reported in the following units:

Concentration of nicotine = mg of nicotine/gram of tobacco sample.

11. Determine the recovery of nicotine by pipetting 10 mL of the 0.4 mg/mL nicotine standard to a screw capped tube containing 1.0 mL of 2 N NaOH and 10 mL of extraction solution (II.D.1). Cap the tube and tighten. Shake the contents vigorously and allow the phases to separate. Transfer an aliquot of the organic phase to an injection vial and inject. Calculate the concentration of nicotine using the equation of the line above in II.A.2.d. This should be repeated two more times to obtain an average of the three values. The recovery of nicotine can be obtained by using Equation 2:

$Recovery = Nicotine_{calculated}/Nicotine_{actual}$

12. Compare the results of steps II.A.2. and II.B. If they differ by a factor of 10% or more, the recovery of nicotine from the aqueous matrix is not equivalent to recovery from the vegetable matrix of the smokeless tobacco product. In this instance, the nicotine concentration of the smokeless tobacco product must be determined from a nicotine calibration curve prepared from nicotine standards in a vegetable-based matrix.

C. Quality Control Pools

At least two quality control pools at the high and low ends of the expected nicotine values are recommended to be included in each analytical run. The pools should be analyzed in duplicate in every run. The quality control pools should be available in sufficient quantity to last for all analyses of a product lot.

D. Sample Extraction Procedure[12]

1. Extraction solution is prepared by pipetting 10 mL of the IS from the stock solution (II.A.1) to a 1000 mL volumetric flask and diluting to volume with MTBE.

2. Using an analytical balance, accurately weigh 1.000 ± 0.020 gram of prepared tobacco sample into culture tube and record weight.[15] The number of products sampled per lot should reflect an acceptable level of precision.[16] The test material is to be representative of the product that is sold to the public and therefore should consist of sealed, packaged samples from each lot of finished product that is ready for commercial distribution. Triplicate determinations will provide precision data.

3. Pipette 5 mL of 2 N NaOH into the tube. Cap the tube. Swirl to wet sample and allow to stand 15 minutes.[13]

4. Pipette 50 mL of extraction solution into tube, cap tube and tighten.[14]

5. Place tubes in rack(s), place racks in linear shaker in horizontal position and shake for two hours.

6. Remove rack(s) from shaker and place in vertical position to allow the phases to separate.

7. Allow the solvent and sample to separate (maximum 2 hours). Transfer an aliquot from the extraction tube to a sample vial and cap.

8. Analyze the extract using GC conditions as described above (I.E) and calculate the concentration of nicotine using the linear calibration equation. Correct percent nicotine values for both recovery and weight of sample by using Equation 3.[17]

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Equation 3:[18]

$$\text{Nicotine (mg/g)} = \frac{(\text{Area}_{\text{nicotine}}/\text{Area}_{\text{IS}}) - a}{b \times \text{Sample Wt} \times \text{Recovery}}$$

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9. Report the *final* nicotine determination as mg of nicotine per gram of the tobacco product (mg nicotine/gram), to an accuracy level of two decimal places for each lot and for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested per lot, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

III. Total Moisture Determination

A. This procedure is a modification of AOAC Method 966.02 (1990) and is referred to as ''Total Moisture Determination'' because it determines water and tobacco constituents that are volatile at temperatures of 99 ± 1.0°C.

B. Accurately weigh 5.00 grams of the sample (ground to pass ≤ 4 mm screen)[19] into a weighed moisture dish and place uncovered dish in oven.[20] The number of products sampled per lot should reflect an acceptable level of precision.[16] The test material is to be representative of the product that is sold to the public and therefore should consist of sealed, packaged samples from each lot of finished product that is ready for commercial distribution. Triplicate determinations will provide precision data.

C. Do not exceed 1 sample/10 sq in. (650 sq cm) shelf space, and use only 1 shelf. Dry 3 hr at 99 ± 1.0°C. Remove from oven, cover, and cool in desiccator to room temp. (about 30 min). Reweigh and calculate percent moisture.

D. Report the *final* moisture determination as a percentage (%), to an accuracy level of one decimal place for each lot and for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested per lot, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

IV. pH Measurement[12,21]

A. Test samples as soon as possible after they are received. The number of products sampled per lot should reflect an acceptable level of precision.[16] The test material is to be representative of the product that is sold to the public and therefore should consist of sealed, packaged samples from each lot of finished product that is ready for commercial distribution. Triplicate determinations will provide precision data.

B. Accurately weigh 2.00 grams of the sample. Place in a 50 mL polypropylene container with 10 mL deionized distilled water.

C. Place Teflon-coated magnetic stirring bar in container and stir mixture continuously throughout testing.

D. Measure pH of sample after a two-point calibration of the pH meter to an accuracy of two decimal places using standard pH buffers (4.01 and 7.00 or 7.00 and 10.00) that will encompass the expected pH value of the smokeless tobacco product.

E. The first time pH values are determined for each lot of a smokeless tobacco product, measure the pH of the smokeless tobacco product at 5, 15, and 30 minutes. If there is no systematic variation in pH values with time, all subsequent pH determinations for the lot are made at 5 minutes. If there is systematic variation in pH values, continue to measure the pH of the smokeless tobacco product until the pH value is stable and does not vary more than 10% over 15 minutes. Report the final pH value.

F. Report the *final* pH determination to an accuracy level of two decimal places for each lot and for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested per lot, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

G. Estimate the un-ionized (free) nicotine content with the Henderson-Hasselbalch equation (Equation 4), based on measured pH and nicotine content.

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Equation 4:

$$pH = pKa + \log \frac{[B]}{[BH^+]}$$

$$B + H^+ \rightleftharpoons BH^+$$

$$\% \text{ un-ionized (free) nicotine} = \frac{\frac{[B]}{[BH^+]}}{\frac{[B]}{[BH^+]} + 1} \times 100$$

pKa = 8.02 (CRC Handbook of Chemistry and Physics, 1989-1990)

[B] = amount of un-ionized (free) nicotine

$[BH^+]$ = amount of ionized nicotine

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H. Report the *final* estimated un-ionized (free) nicotine as a percentage (%) of the total nicotine content, to an accuracy level of two decimal places and as mg of un-ionized (free) nicotine per gram of the tobacco product (mg un-ionized (free) nicotine/gram), to an accuracy level of two decimal places for each lot and for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested per lot, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

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Sample calculation:

Mean total nicotine = 10.30 (mg/g)

Mean pH = 7.50

pKa = 8.02

$$pH = pKa + \log \frac{[B]}{[BH^+]}$$

$$7.50 = 8.02 + \log \frac{[\text{un-ionized (free) nicotine}]}{[\text{ionized nicotine}]}$$

$$-0.52 = \log \frac{[\text{un-ionized (free) nicotine}]}{[\text{ionized nicotine}]}$$

$$0.302 = \frac{[\text{un-ionized (free) nicotine}]}{[\text{ionized nicotine}]}$$

$$\% \text{ un-ionized (free) nicotine} = \frac{\frac{[B]}{[BH^+]}}{\frac{[B]}{[BH^+]} + 1} \times 100$$

$$\% \text{ un-ionized (free) nicotine} = \frac{0.302}{0.302 + 1} \times 100$$

% un-ionized (free) nicotine = 23.20

$$\text{Total free nicotine (mg/g)} = \text{total nicotine} \times \frac{\%\text{ un-ionized (free) nicotine}}{100}$$

$$\text{Total free nicotine (mg/g)} = 10.30 \times \frac{23.20}{100}$$

Total free nicotine (mg/g) = 2.39

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V. Assay Criteria for Quality Assurance

A. Establishing Limits for Quality Control Parameters

All quality control parameters must be determined within the laboratory in which they are to be used. At least 10 within-laboratory runs must be performed to establish temporary confidence intervals for the quality control parameters. Permanent limits should be established after 20 runs and should be reestablished after each additional 20 runs.

B. Exclusion of Outliers From the Calibration Curve [18]

The coefficient of determination between $Area_{nicotine}/Area_{IS}$ and nicotine concentration should be equal to 0.99 or higher. Any calibration standard having an estimated concentration computed from the regression equation (Equation 1) which is different from its actual concentration by a factor of 10% can be excluded from the calibration curve. Up to two concentrations may be excluded, but caution should be used in eliminating values, since bias may be increased in the calibration curve. If an outlier value is eliminated, its duplicate value must also be discarded to avoid producing a new bias. All unknowns must fall within the calibration curve; therefore, duplicate values excluded at either end of the calibration curve will restrict the useful range of the assay.

C. Quality Control Pools and Run Rejection Rules

The mean estimated nicotine concentration in a pool should be compared with the established limits for that pool based on at least 20 consecutive runs. An analytical run should be accepted or rejected based upon the following set of rules adapted from Westgard et al. (1981).

1. When the mean of one QC pool exceeds the limit of $x \pm 3$ standard deviations (SD), then the run is rejected as out of control. Here, x and SD represent the overall mean and standard deviation of all estimated nicotine concentrations for a particular pool in the runs which were used to establish the control limits.

2. When the mean nicotine concentrations in two QC pools in the same run exceed the same direction, then the run must be rejected. The same direction is the condition in which both pools exceed either the $x + 2$ SD or the $x - 2$ SD limits.

3. When the mean nicotine concentrations in one or two QC pools exceed their $x \pm 2$ SD limits in the same direction in two consecutive runs, then both runs must be rejected.

4. When the mean nicotine concentrations in two QC pools are different by more than a total of 4 SD, then the run must be rejected. This condition may occur, for example, when one QC pool is 2 SD greater than the mean, and another is 2 SD less than the mean.

Endnotes

The comments and notes listed below can be described as Good Laboratory Practice guidelines; they are described in detail in this protocol to ensure minimal interlaboratory variability in the determination of nicotine, total moisture, and pH in smokeless tobacco.

[1] This protocol assumes that the testing facility will implement and maintain a stringent Quality Assurance/Quality Control program to include, but not be limited to, regular interlaboratory comparisons, determination of the quality and purity of purchased products, and proper storage and handling of all reagents and samples.

[2] When a specific product or instrument is listed, it is the product or instrument that was used in the development of this method. Equivalent products or instruments may also be used. Use of trade names is for identification only and does not constitute endorsement by the Public Health Service or the U.S. Department of Health and Human Services.

[3] All chemicals, solvents, and gases are to be of the highest purity.

[4] Companies must ensure that the purity of the nicotine base is certified by the vendor and that the chemical is properly stored. However, nicotine base oxidizes with storage, as reflected by the liquid turning brown. If oxidation has occurred, the nicotine base should be distilled prior to use in making a standard solution.

[5] A suggested method for the determination of nicotine purity is CORESTA Recommended Method No. 39.

[6] Horizontal shaking will allow more intimate contact of this three phase extraction. There is a minimal dead volume in the tube due to the large sample size and extraction volume. This necessitates horizontal shaking.

[7] If linear shaker is not available, a wrist action shaker using 250 mL stoppered Erlenmeyer flasks can be substituted. Values for nicotine are equivalent to those obtained from the linear shaker.

[8] After installing a new column, condition the column by injecting a tobacco sample extract on the column, using the described column conditions. Injections should be repeated until areas of IS and nicotine are reproducible. This will require approximately four injections. Recondition column when instrument has been used infrequently and after replacing glass liner.

[9] Glass liner and septum should be replaced after every 100 injections.

[10] Most older instruments operate at constant pressure. To reduce confusion, it is suggested that the carrier gas flow through the column be measured at the initial column temperature.

[11] The testing facility must ensure that samples are obtained through the use of a survey design protocol for sampling ''at one point in time'' at the factory or warehouse. The survey design protocol must address short-, medium-, and long-term smokeless tobacco product variability (e.g., variability over time and from container to container of the tobacco product) in a manner equivalent to that described for cigarette sampling in Annex C of ISO Protocol 8243. Information accompanying results for each sample should include, but not be limited to:

1. For each product—manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.) information.
2. Product ''category,'' e.g., loose leaf, plug, twist, dry snuff, moist (wet) snuff, etc.
3. Lot number.
4. Lot size.
5. Number of randomly sampled, sealed, packaged (so as to be representative of the product that is sold to the public) smokeless tobacco products selected per lot (sampling fraction) for nicotine, moisture, and pH determination.
6. Documentation of method used for random sample selection.
7. ''Age'' of product when received by testing facility and storage conditions prior to analysis.

[12] Extraction of nicotine and pH determination must be performed with reagents and samples at a room temperature of 22–25°C. Room temperature should not vary more than 1°C during extraction of nicotine or pH determination.

[13] Use non-glass 10 mL repipette for transferring NaOH solution.

[14] Use 50 mL repipette for transferring MTBE.

[15] For dry snuff, use 0.500 ± 0.010 gram sample.

[16] The testing facility is referred to ISO Procedure 8243 for a discussion of sample size and the effect of variability on the precision of the mean of the sample (ISO 8243, 1991).

[17] When analyzing new smokeless tobacco products, extract product without IS to determine if any components co-elute with the IS or impurities in the IS. This interference could artificially lower calculated values for nicotine.

[18] The calculated nicotine values for all samples must fall within the low and high nicotine values used for the calibration curve. If not, prepare a fresh nicotine standard solution and an appropriate series of standard nicotine dilutions. Determine the detector response for each standard using chromatographic conditions described in I.E.

[19] The method is a modification of AOAC Method 966.02 (1990) in that the ground tobacco passes through a 4 mm screen rather than a 1 mm screen.

[20] When drying samples, do not dry different products (e.g., moist (wet) snuff, dry snuff, loose leaf) in the oven at the same time since this will produce errors in the moisture determinations.

[21] The method is based on a method published by Henningfield et al. (1995).

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