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Monday
May 10, 1999

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WHEN: May 18, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Grape Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of grapes. The intended effect of this action is to provide policy changes to better meet the needs of the insured by adding provisions that allow grape producers in Idaho, Oregon, and Washington to select one price election and one coverage level for each varietal group specified in the Special Provisions and provide year-round coverage in California, Idaho, Mississippi, Oregon, Texas, and Washington for insureds with no break in coverage from the prior crop year to be effective for the 2000 and subsequent crop year.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

On Wednesday, September 2, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 46706–46708 to revise 7 CFR 457.138, Grape Crop Insurance Provisions, effective for the 2000 and succeeding crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of six comments were received from an insurance service organization, two reinsured companies, a producer association, and a representative of a producer association. The producer association and one reinsured company concurred with the proposed changes

made to the regulation. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization suggested issuing an amendatory endorsement, rather than reissuing the entire Grape Crop Provisions, to minimize cost for companies that provide insurance for grapes.

Response: The crop insurance policy is contractual in nature and the subject matter is complicated and difficult to read and understand. Use of an amendatory endorsement attached to a complicated policy, part of which is no longer in effect, may cause confusion and misunderstanding. This is especially true if a major change, such as a provision for year-round coverage, is made to the policy. FCIC has been attempting to construct crop insurance policies that are easier to understand by using common terms, provisions, and policy format. Reissuing a complete policy when major changes are made is necessary to achieve this goal.

Comment: A reinsured company questioned whether rates will reflect the increased exposure resulting from the extended coverage and suggested that they should.

Response: FCIC will determine if the extended insurance period results in additional risk not reflected in the current premium rate structure for grapes. Premium rates will be adjusted to reflect any increased risk.

Comment: A reinsured company suggested that an insured would have nothing to lose by applying for increased coverage prior to the sales closing date but following a cause of loss that could or would reduce the yield of the insured crop. The commenter questioned how the provision will be administered and objected to the proposed changes if expenses for delivery of the program will increase. The commenter also questioned when coverage would begin for a newly written policy.

Response: Under the terms of the policy, if the potential exists for grape yields to be affected, the coverage level or ratio of the price election to the maximum price election cannot be increased by the insured. All grape producers are required to annually complete a worksheet to certify if damage (e.g., disease, hail, freeze) occurred to the vines or if cultural practices used will reduce the insured's crop production from previous levels. Agents will also be able to access weather and crop information; therefore, insurance providers should be able to determine if damage exists.

The extended period of coverage for grapes is during the period of dormancy when the risk of loss is generally low, especially in California where winter damage is minimal. FCIC believes that occurrences of insured causes of loss during the extended period of coverage will be infrequent; therefore, expenses resulting from administration of the additional coverage should be minimal. Coverage for new insureds will not attach until the day following the sales closing date unless the application is received on or within 8 days prior to the sales closing date. Insurance will then attach on the 10th day after the properly completed application is received in the crop insurance provider's office, unless the acreage is inspected during the 10 day period and does not meet insurability requirements. For existing policies, coverage will begin with the 2000 crop year and will not provide coverage retroactively to cover the uninsured period in the 1999 crop year.

Comment: A representative of a producer association recommended that, in addition to the proposed changes, sections 2 and 3 of the Grape Crop Provisions be revised to permit grape producers in the State of Oregon to: (1) Establish basic units by variety; (2) establish optional units only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement; (3) select only one price election and coverage level for each grape variety in the county specified in the Special Provisions; and (4) apply for a written agreement to establish a price election if the Special Provisions do not provide a price election for a specific variety that is insured.

Response: Revising the Grape Crop Provisions to provide coverage by variety in the State of Oregon requires extensive, detailed production and price information data on the varieties produced. This coverage is available in California because detailed data is available by crush district from the California Department of Food and Agriculture. FCIC is revising the Grape Crop Provisions to allow grape producers in Idaho, Oregon, and Washington to select one coverage level and one price election for each varietal group designated in the Special Provisions because it has obtained sufficient data. Currently, FCIC has access to only limited statewide data from the National Agriculture and Statistic Service on grape varieties produced in Oregon. Additional data on grape variety production, acreage, price, and critical temperatures in each county or district are necessary to provide coverage and price elections based on grape varieties in Oregon. If data are available, FCIC will work with grape producers in Oregon and other states to determine if different coverage and price elections can be provided by grape variety.

In addition to the changes described above and minor editorial changes, FCIC has made the following change to the Grape Crop Provisions:

Section 3—Amended section 3(f) of the proposed rule for clarification. The phrase ''after coverage begins'' that followed ''* * * you may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer. * * *'' was removed. The phrase is unnecessary and may cause confusion.

List of Subjects in 7 CFR Part 457

Crop insurance, Grape.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.138, for the 2000 and succeeding crop years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.138 is revised by amending the introductory text to read as follows:

§ 457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

3. In § 457.138, sections 3(b) and 3(c) are revised and a new section 3(f) is added at the end of section 3 to read as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) In Idaho, Oregon, and Washington, you may select only one price election and coverage level for each grape varietal group specified in the Special Provisions.

(c) In all states except California, Idaho, Oregon, and Washington, you may select only one price election and coverage level for all the grapes in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price

election for each varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

* * * * *

(f) In California, Idaho, Mississippi, Oregon, Texas, and Washington, you may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. In § 457.138, section 9(a)(2) is redesignated as 9(a)(3) and a new section 9(a)(2) is added to read as follows:

9. Insurance Period.

(a) * * *

(1) * * *

(2) In California, Idaho, Mississippi, Oregon, Texas, and Washington, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

* * * * *

Signed in Washington, DC on April 6, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–11595 Filed 5–7–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AF67

Dairy Market Loss Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth the regulations for the Dairy Market Loss Assistance Program as authorized by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (''the 1999 Act''). Eligible dairy producers may receive a direct payment on the first 26,000 hundredweight (cwt) of milk marketed commercially during the 1997 or 1998 calendar year. The payment per cwt will depend upon the amount of the eligible milk production under the program. This action is designed to provide immediate financial assistance to producers of dairy operations who recently experienced a severe decline in the price received for their milk.

DATES: Effective May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Program Specialist, Farm Service Agency (FSA), USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512; telephone: (202) 720–7320.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates subject to the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act and Notice and Comment

Section 1133 of the 1999 Act exempts this rulemaking from notice and comment, from the Paperwork Reduction Act, and provides that the provisions of 5 U.S.C. 808 which allow exemption from layovers for Congressional review shall be applied. Accordingly this rule and its information collection requirements are made effective immediately in accordance with these provisions. Because of the foregoing provisions and because this rule provides needed time-sensitive relief, delay in completing this rule would be contrary to the public interest.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Section 1111, Market Loss Assistance, of the 1999 Act (Pub. L. 105–277, 112 Stat. 2681) directs the Secretary of Agriculture to provide $200 million in assistance to dairy producers. Section 1131 of the 1999 Act provides that the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) to carry out the program. The program will be administered by the Farm Service Agency (FSA).

The estimated 116,000 dairy operations in the United States account for about $22.86 billion in milk production annually. The Basic Formula Price (BFP), which is the price that the Federal Milk Marketing Order system sets for milk used in manufacturing and is the price mover for fluid milk, exceeded previous record highs in July, August, October, November, and December 1998. The 1998 BFP averaged

$14.20 per cwt, compared with the previous record of $13.39 per cwt in 1996.

Milk prices were high because dairy product supplies were low relative to demand. Milk production per cow was relatively weak in the summer months of 1998 due to poor forage quality in the Northern States and relatively high temperatures in the Western States. The high milk prices and low feed costs, along with low cow cull prices have encouraged dairy farmers to increase production. Milk production in the October through December 1998 period increased 2.4 percent above the same period in 1997. This increase is significantly above the past 5-year average increase of 0.15 percent for the October through December 1998 period. The January 1999 milk production increased by 3.7 percent over January 1998 milk production.

Cow productivity is expected to increase by 2.0 percent, and cow numbers are expected to decline less than half the trend of the past decade. The increase in milk production is expected to cause the BFP to decline.

Payments under this program will be limited to dairy operations which produced and marketed milk commercially during the fourth quarter of 1998. Eligible dairy operations can receive payments with respect to the first 26,000 cwt of milk marketed commercially in either calendar year 1997 or 1998 but not both. Changes in dairy operations or producer status from the fourth quarter of 1998 to the date of application will not affect the Dairy Market Loss Assistance payment. The Dairy Market Loss Assistance payment is limited to: (1) The dairy operation that was in existence during the fourth quarter of 1998; and (2) the person(s) involved in such dairy operation during the fourth quarter of 1998.

The per cwt payment rate will be the $200 million available for the Dairy Market Loss Assistance Program divided by the eligible production of milk (limited to 26,000 cwt per dairy operation) marketed commercially during the base period. Persons representing dairy operations making application for the benefits under this part shall self-certify with respect to either 1997 or 1998 calendar year milk production for the dairy operation. This includes any milk marketed from any person who is involved in marketed milk from the dairy operation which marketed milk during the selected marketing period. The calendar year milk marketings selected for the base period by the dairy operation cannot be combined with or changed to any milk marketings from another calendar year, as certified on the application, Form CCC–1040.

Eligible dairy operations must also: (1) Have produced and marketed milk commercially anytime during the fourth quarter of 1998; and (2) apply for cash payments during the application period. Persons representing dairy operations shall self-certify that they meet all eligibility requirements.

Persons representing dairy operations may apply in person at county FSA offices during regular business hours and at that time complete the Dairy Market Loss Assistance Program Payment application on Form CCC–1040. Alternatively, dairy operations may request the Dairy Market Loss Assistance Program Payment application by mail, telephone, facsimile from their designated county FSA office or obtain the application via the internet. The internet website is located at www.fsa.usda.gov/dafp/psd/. The completed application, Form CCC–1040, must be received by a dairy operation's local county FSA office by the due date as specified in the program regulations and can be returned in person, by mail, or by facsimile.

This rule is being made effective immediately. Because of the negative impact the rapid decline in the price of milk has on dairy operations, particularly small dairy operations, a delay in making this assistance available would be contrary to the public interest and the purpose of the authorizing statute.

List of Subjects in 7 CFR Part 1430

Dairy products, Price support programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 1430 is amended by adding Subpart D—Dairy Market Loss Assistance Program to read as follows:

PART 1430—DAIRY PRODUCTS

1. Subpart D—Dairy Market Loss Assistance Program is added to read as follows:

Subpart D—Dairy Market Loss Assistance Program

Sec.

1430.500 Applicability.
1430.501 Administration.
1430.502 Definitions.
1430.503 Time and method for application.
1430.504 Eligibility.
1430.505 Proof of production.
1430.506 Payment rate and dairy operation payment.
1430.507 Misrepresentation and scheme or device.
1430.508 Maintaining records.
1430.509 Refunds; joint and several liability.

Authority: Pub. L. 105–227, 112 Stat. 2681.

§ 1430.500 Applicability.

This subpart establishes the Dairy Market Loss Assistance Program. The purpose of this program is to provide benefits to dairy operations under Pub. L. 105–277, 112 Stat. 2681, in order to provide financial assistance to dairy operations in connection with normal milk production that is sold on the commercial market.

§ 1430.501 Administration.

(a) The provisions of §§ 1430.351, 1430.352, 1430.354, 1430.355, and 1430.360 shall be applied to this subpart in the same manner as they are applied to the subpart in which they are located.

(b) The provisions of §§ 1430.1 through 1430.349, 1430.353, 1430.356 through 1430.359, 1430.361 through 1430.362, and 1430.400 through 1430.410 are not applicable to this subpart.

(c) This subpart shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Executive Vice President, CCC or designee. The program shall be carried out in the field by State and county FSA committees under the general direction and supervision of the State and county FSA committees.

(d) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this subpart.

(e) The State committee shall take any action required by this subpart which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(f) No delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(g) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 1430.502 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Dairy Market Loss Assistance Program established by this subpart.

Application means the Dairy Market Loss Assistance Program Payment application, CCC–1040.

Application period means April 12, 1999 through May 21, 1999.

Base period means the calendar year, either 1997 or 1998, as selected by the dairy operation, during which milk was produced and marketed.

Commodity Credit Corporation means the Commodity Credit Corporation.

Dairy operation means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows and whose production and facilities are located in the United States.

Department means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

Eligible production means milk that had been produced by cows in the United States and marketed commercially in the United States anytime during the 1997 and or 1998 calendar year, subject to a maximum of 26,000 cwt per dairy operation.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Fourth quarter of 1998 means the period from October 1, 1998 through December 31, 1998.

Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

Milk handler means the marketing agency to or through which the producer commercially markets whole milk.

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1430.503 Time and method for application.

(a) Dairy operations may obtain an application, Form CCC–1040 (Dairy Market Loss Assistance Program Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the CCC–1040 at http://www.fsa.usda.gov/dafp/psd/.

(b) A request for benefits under this subpart must be submitted on a completed Form CCC–1040. The Form CCC–1040 should be submitted to the county FSA office serving the county where the dairy operation is located but, in any case, must be received by the county FSA office by the close of business on May 21, 1999. Applications not received by the close of business on May 21, 1999, will be disapproved as not having been timely filed and the dairy operation will not be eligible for benefits under this program.

(c) All persons who share in the milk production of a dairy operation that marketed milk during the fourth quarter of 1998 must certify on the same CCC–1040 in order to obtain the total milk production of the dairy operation before the application is complete.

(d) The dairy operation requesting benefits under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 1430.504 Eligibility.

(a) To be eligible to receive cash payments under this subpart, a dairy operation must:

(1) Have produced and marketed milk commercially in the United States anytime during the fourth quarter of 1998;

(2) Indicate all milk commercially marketed by all persons in the dairy operation during calendar year 1997 and 1998 to establish the base period for determining the total pounds of milk that will be converted to hundredweight (cwt) used for payment; and

(3) Apply for payments during the application period.

(b) A dairy operation must submit a timely application and comply with all other terms and conditions of this subpart and those that are otherwise contained in the application to be eligible for benefits under this subpart.

§ 1439.505 Proof of production.

(a) Dairy operations selected for spotchecks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the dairy operation was commercially marketing milk anytime during the fourth quarter of 1998. The dairy operation must also provide proof of production for the 1997 or 1998 calendar year to verify the base period. The documentary evidence of milk production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The pounds of 1997 or 1998 calendar year milk production must be documented using actual records.

(b) All persons involved in such dairy operation marketing milk during the fourth quarter of 1998 shall provide any available supporting documents to assist the county FSA office in verifying that the dairy operation produced and marketed milk commercially during the fourth quarter of 1998 and the base period milk marketings indicated on Form CCC–1040. Examples of supporting documentation include, but are not limited to: tank records, milk handler records, milk marketing payment stubs, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, dairy operations will be determined ineligible for benefits.

§ 1430.506 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations only on the first 26,000 cwt of milk produced by them from cows in the United States actually marketed in the United States during the base period. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Converting whole pounds of milk to cwt;

(2) Totaling the eligible cwt (not to exceed 26,000 cwt) of milk marketed commercially during the base period from all approved applications; and

(3) Dividing the amount available for Dairy Market Loss Assistance Program by the total eligible cwt submitted and approved for payment.

(b) Each dairy operation payment will be calculated by multiplying the payment rate determined in paragraph (a) (3) of this section by the dairy operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

§ 1430.507 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a dairy operation engaged in a misrepresentation, scheme, or device, or to any other person as a result of the dairy operation's actions, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1430.508 Maintaining records.

Dairy operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart and the pounds of milk marketed commercially during the fourth quarter of 1998 and the base period. Such records and accounts must be retained for at least three years after the date of the cash payment to dairy operations under this program.

§ 1430.509 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this subpart, all payments made under this subpart to any dairy operation shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a dairy operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this subpart.

(c) Interest shall be applicable to refunds required of the dairy operation if CCC determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the dairy operation.

(d) Interest determined in accordance with paragraph (c) of this section may be waived by CCC with respect to refunds required of the dairy operation because of unintentional misaction on the part of the dairy operation, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 1403.

(f) Dairy operations must refund to CCC any excess payments made by CCC with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Signed at Washington, D.C., on April 30, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–11596 Filed 5–7–99; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AB94

Government in the Sunshine Act Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Notice of intent to implement currently effective rule and request for comments.

SUMMARY: The Nuclear Regulatory Commission (Commission) is announcing its intent to implement a final rule, published and made effective in 1985, that amended its regulations applying the Government in the Sunshine Act. The Commission is taking this action to provide an opportunity for public comment on its intent because of the time that has passed since the Commission last addressed this issue. This action is necessary to complete resolution of this issue.

DATES: The May 21, 1985, interim rule became effective May 21, 1985. Submit comments by June 9, 1999. Unless the Commission takes further action, non-Sunshine Act discussions may be held beginning June 1, 1999.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

FOR FURTHER INFORMATION CONTACT: Trip Rothschild, Assistant General Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 415–1607.

SUPPLEMENTARY INFORMATION: The Commission, through this notice of the Commission's intent to implement a rule published and made effective in 1985, seeks to bring closure to a rulemaking that amended the NRC's regulations applying the Government in the Sunshine Act. Because of the years that have elapsed, the Commission is providing this notice of its intent to implement this rule and is providing an opportunity for additional public comment on the Commission's proposal to implement.

The purpose of the rule is to bring the NRC's Sunshine Act regulations, and the way they are applied by NRC, into closer conformity with Congressional intent, as set forth in the legislative history of the Sunshine Act and as clarified in a unanimous Supreme Court decision, *FCC* v. *ITT World*

Communications, 466 U.S. 463 (1984). The NRC's original Sunshine Act regulations, adopted in 1977, treated every discussion of agency business by three or more Commissioners, no matter how informal or preliminary it might be, as a ''meeting'' for Sunshine Act purposes. As the 1984 Supreme Court decision made clear, however, ''meetings,'' to which the Act's procedural requirements apply, were never intended to include casual, general, informational, or preliminary discussions, so long as the discussions do not effectively predetermine final agency action. These kinds of ''non-Sunshine Act discussions,'' which can be an important part of the work of a multi-member agency, had been foreclosed at NRC since 1977 by the agency's unduly restrictive interpretation of the Sunshine Act.

In response to the Supreme Court's clarification of the law, the Commission in 1985 issued an immediately effective rule that revised the definition of ''meeting'' in the NRC's Sunshine Act regulations. To ensure strict conformity with the law, the new NRC rule incorporated verbatim the Supreme Court's definition of ''meeting.'' The rule change drew criticism, however, much of it directed at the fact that it was made immediately effective, with an opportunity to comment only after the fact. To address some of the concerns raised, the NRC informed the Congress that it would not implement the rule until procedures were in place to monitor and keep minutes of all non-Sunshine Act discussions among three or more Commissioners. No such procedures were ever adopted, however, nor was the rule itself implemented, and the issue remained pending from 1985 on.

The Commission believes that it is time to bring the issue of the NRC's Sunshine Act rules to a resolution. As noted, because of the many years that have passed since the Commission last addressed this issue, the NRC is providing this notice of its intent finally to implement and use the 1985 rule, and providing 30 days for public comment on the Commission's proposal to implement. The Commission will not modify its current practices, under which no non-Sunshine Act discussions take place, until it has had the opportunity to consider any comments received.

I. Background

On April 30, 1984, the United States Supreme Court issued its first decision interpreting the Government in the Sunshine Act, *Federal Communications Commission* v. *ITT World Communications,* 466 U.S. 463. Though the case could have been decided on narrow, fact-specific grounds, the Court used the opportunity to offer guidance on what leading commentators have described as ''one of the most troublesome problems in interpreting the Sunshine Act'': the definition of ''meeting'' as that term is used in the Act. R. Berg and S. Klitzman, An Interpretive Guide to the Government in the Sunshine Act (1978), at 3. The Court rejected the broad view of the term ''meeting'' that the U.S. Court of Appeals for the District of Columbia Circuit had taken. It declared that the statutory definition of a ''meeting'' contemplated ''discussions that 'effectively predetermine official actions.' '' The Court went on:

> Such discussions must be ''sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency.'' 466 U.S. at 471.

The Court reviewed the legislative history, demonstrating how in the process of revising the original bill, Congress had narrowed the Act's scope. In the Court's words, ''the intent of the revision clearly was to permit preliminary discussion among agency members.'' *Id.* at 471, n.7. The Court explained Congress's reasons for limiting the reach of the Sunshine Act:

> Congress in drafting the Act's definition of ''meeting'' recognized that the administrative process cannot be conducted entirely in the public eye. ''[I]nformal background discussions [that] clarify issues and expose varying views'' are a necessary part of an agency's work. [Citation omitted.] The Act's procedural requirements effectively would prevent such discussions and thereby impair normal agency operations without achieving significant public benefit. Section 552b(a)(2) therefore limits the Act's application. * * *

Id. at 469–70.

At the time the Supreme Court handed down the ITT decision, the Nuclear Regulatory Commission had for almost eight years applied the Government in the Sunshine Act as though it required every discussion of agency business to be conducted as a ''meeting.'' Recognizing that the Supreme Court's guidance indicated that the NRC's interpretation of ''meeting'' had been unduly broad, the NRC's Office of the General Counsel (OGC) advised the Commissioners in May 1984 that the decision seemed significant: the decision was unanimous and it was the first time that the Supreme Court had addressed the Act. OGC suggested that revisions in the NRC's regulations might be appropriate to bring the NRC into line with Congressional intent.

Soon after that, in August 1984, the Administrative Conference of the United States (a body, since abolished, to which the Sunshine Act assigned a special role in the implementation of the Act by federal agencies) issued Recommendation 84–3, based upon an extensive study of the Sunshine Act. The Administrative Conference was troubled by what it saw as one harmful effect of the Act on the functioning of the multi-member agencies. Commenting that ''one of the clearest and most significant results of the Government in the Sunshine Act is to diminish the collegial character of the agency decision making process,'' the Administrative Conference recommended that Congress consider whether the Act should be revised. The Conference observed:

> Although the legislative history indicates Congress believed that, after the initial period of adjustment, Sunshine would not have a significant inhibiting effect on collegial exchanges, unfortunately this has not been the case.

If Congress decided that revisions were in order, the Conference said, it recommended that agency members be permitted to discuss ''the broad outlines of agency policies and priorities'' in closed meetings. The Administrative Conference did not address the distinction between ''meetings'' and those discussions that are outside the scope of the Act.

II. The NRC's 1985 Rule

On May 21, 1985 (50 FR 20889), the Nuclear Regulatory Commission issued new regulations implementing the Government in the Sunshine Act. As a legal matter, the NRC could have continued to use the language of its existing regulations, and reinterpreted them in accordance with the Supreme Court's decision. However, the NRC decided that in the interest of openness, it should declare explicitly that its view of the Act's requirements had changed in light of the Court's ruling.

The revised rule conforms the definition of ''meeting'' in the Commission's rules to the guidance provided by the Supreme Court by incorporating the very language of the Court's decision into its revised definition. Specifically, it provides, at 10 CFR 9.101(c):

> Meeting means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to

be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by §§ 9.105. 9.106, or 9.108(c) do not constitute ''meetings'' within this definition.

Under the rule, which was adopted as an immediately effective ''interim'' rule (it was characterized as ''interim'' to reflect the fact that it was being made effective before any comments were received and addressed), with an opportunity for public comment, briefings were excluded from the category of ''meetings.'' In the NRC's pre-1985 regulations, by contrast, briefings were treated as meetings, as a matter of policy.

The NRC's 1985 rule proved controversial. In response to Congressional criticism, much of it directed at the Commission's decision to make the rule immediately effective, the Commission assured the Congress that it would conduct no non-Sunshine Act discussions until procedures were in place to govern such discussions.

In December 1985, the NRC's Office of the General Counsel forwarded a final rulemaking paper in which comments on the interim rule were analyzed and responded to. However, by the time that the Commission was briefed on the comments, the American Bar Association had announced its intention to address Sunshine Act issues, including matters directly related to the NRC's rulemaking. The Commission therefore decided to withhold action on the matter and to defer actual implementation and use of the 1985 rule pending receipt of the ABA's views.

III. The American Bar Association Acts

In the fall of 1985, William Murane, Chairman of the Administrative Law Section of the American Bar Association, announced that the Council of the Administrative Law Section had decided to involve itself in the controversy over the Sunshine Act and its effect on the collegial character of agency decision making. Administrative Law Review, Fall 1985, Vol. 37, No. 4, at p. v. The Task Force established by the Administrative Law Section ultimately focused on a single issue: the definition of ''meeting'' under the Sunshine Act. Its report and recommendations were accepted by the Administrative Law Section in April 1986 and by the full American Bar Association in February 1987.

The ABA's recommendation and report confirmed that the Commission's reading of the Sunshine Act, as interpreted by the Supreme Court in the ITT decision, was legally correct. Moreover, the legal standard set forth in the ABA recommendation incorporated the identical language from the Supreme Court opinion which the NRC had included in its 1985 rule: i.e., the provision stating that for a discussion to be exempt from the definition of ''meeting,'' it must be ''[not] sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating [agency] members to form reasonably firm positions regarding matters pending or likely to arise before the agency.'' Subject to that qualification, the ABA guidelines provide that the definition of ''meeting'' does not include:

(a) Spontaneous casual discussions among agency members of a subject of common interest; (b) Briefings of agency members by staff or outsiders. A key element would be that the agency members be primarily receptors of information or views and only incidentally exchange views with one another; (c) General discussions of subjects which are relevant to an agency's responsibilities but which do not pose specific problems for agency resolution; and (d) Exploratory discussions, so long as they are preliminary in nature, there are no pending proposals for agency action, and the merits of any proposed agency action would be open to full consideration at a later time.[1]

The ABA report disposed of the suggestion, advanced by some critics of the NRC's interim rule, ''that the Supreme Court's opinion should be limited to the facts before the Court.'' While it recognized that the case could have been decided on fact-specific grounds, the report observed that:

[I]t cannot be assumed that the Supreme Court got carried away or that it was unaware that the definition of ''meeting'' was controversial and ''one of the most troublesome problems in interpreting the Sunshine Act.'' [Interpretive Guide 3.] We concluded therefore, that the Supreme Court meant what it said in ITT World Communications, and that it intended to provide guidance to agencies and the courts in applying the definition of ''meeting.'' Report at 7.

The ABA report also rejected the argument that because of the ''difficulty of specifying in advance those characteristics of a particular discussion which will cause it to fall short of becoming a meeting,'' the Supreme Court's view of the Act should not become part of agency practice. [Emphasis in the original.] The logic of this argument, said the ABA report, would permit no discussion whatever of agency business except in ''meetings,'' a result which ''seems clearly to us not to have been intended by Congress.'' Report at 8. The report noted that this argument in essence was a claim that agencies should apply a different standard from the one specified by Congress for distinguishing ''meetings'' from discussions that are not ''meetings.'' The ABA explained:

* * * Congress can hardly have gone to such pains to articulate a narrower standard had it not expected the agencies to use the leeway such a standard provides, and if they are to do so, they must attempt to set out in advance, whether by regulation or internal guidelines, the elements or characteristics of a discussion which will cause it to fall short of being a meeting. Report at 8, fn. 9.

The ABA report's conclusion was a measured endorsement of the value of non-Sunshine Act discussions. After stressing that its purpose was not to urge agencies to close discussions now held in open session, the report made clear that its focus, rather, was on the discussions which, because of the Sunshine Act, are never initiated in the first place. It said:

But the fact is that the Sunshine Act has had an inhibiting effect on the initiation of discussions among agency members. This is the conclusion of the Welborn report [to the Administrative Conference], and it is confirmed by our meeting with agency general counsels * * * [T]he Act has made difficult if not impossible the maintenance of close day-to-day working relationships in [five-member and three-member] agencies. * * * We believe that a sensible and sensitive application of the principles announced in the ITT case can ease the somewhat stilted relationships that exist in some agencies. Report at 11–12. [Emphasis in the original.]

The ABA report made clear that it did not regard the opportunity for non-Sunshine Act discussions as a panacea for the Sunshine-caused loss of collegiality which the Administrative Conference had identified, and which the ABA's own inquiry had confirmed. The Report concluded that the impact of loosened restrictions was likely to be ''slight,'' though it saw ''some tendency to increase collegiality * * * to the extent that it would contribute to more normal interpersonal relationships among agency members.'' Report at 12. The Report also observed that collegiality is most important in group decision-making sessions, where the Act's ''meeting'' requirements clearly apply.

The ABA report recommended that agencies follow procedures for the monitoring and memorialization of non-Sunshine Act discussions to give assurance to the public that they are staying within the law. The ABA made clear that this was a policy recommendation, not a matter of legal obligation. (The report noted at one

[1] A fuller description of the types of discussions fitting in these four categories may be found at pages 9 to 11 of the ABA report.

point that if a discussion ''is not a 'meeting,' no announcement or procedures are required because the Act has no application.'' Report at 6.) The ABA recommended that General Counsels brief agency members in advance on the requirements of the law, to assure their familiarity with the restrictions on non-Sunshine Act discussions, and that non-Sunshine Act discussions (other than ''spontaneous casual discussions of a subject of common interest'') be monitored, either by the General Counsel or other agency representatives, and memorialized through notes, minutes, or recordings.

IV. Further Developments

On August 5, 1987, an amendment was offered to the NRC authorization bill to bar the Commission from using any funds in fiscal year 1988 or 1989 ''to hold any Nuclear Regulatory Commission meeting in accordance with the interim [Sunshine Act] rule [published in] the **Federal Register** on May 21, 1985.'' 133 Cong. Rec. H7178 (Aug. 5. 1987).[2] As Chairman Philip Sharp of the Subcommittee on Energy and Power of the House Committee on Energy and Commerce explained, the amendment ''simply neutralizes a rule change.'' The amendment, passed by a voice vote, was not passed by the Senate and thus was not enacted into law.

The Commission took no further action regarding the Sunshine Act after 1985, and the issue was allowed to become dormant. While the ''interim'' rule of 1985 has remained in effect and on the books, at 10 Code of Federal Regulations, Part 9, the Commission has continued to apply its pre-1985 rules. Accordingly, all discussions of business by three or more Commissioners have continued to be treated as ''meetings,'' whether formal or informal, deliberative or informational, decision-oriented or preliminary, planned or spontaneous. No non-Sunshine Act discussions of any kind have been held. In the meantime, some other agencies adopted and implemented rules that permit informal discussions that clarify issues and expose varying views but do not effectively predetermine official actions, discussions of the sort that the Court's ITT decision said are a ''necessary part of an agency's work.'' 466 U.S. at 469–70. See, for example, the Occupational Safety and Health Review Commission's (OSHRC) and Defense Nuclear Facility Safety Board's (DNFSB) definitions of ''meeting'', at 29 CFR 2203.2(d) (50 FR 51679; 1985) and 10 CFR 1704.2(d)(5) (56 FR 9609; 1991), respectively.

In February 1995, Commissioner Steven M.H. Wallman of the Securities and Exchange Commission, joined by twelve other Commissioners or former Commissioners of four independent regulatory agencies (the Securities and Exchange Commission, Federal Communications Commission, Commodity Futures Trading Commission, Federal Trade Commission), wrote to the Administrative Conference of the United States to urge a reevaluation of the Sunshine Act. The group expressed strong support for the Act's objective of ensuring greater public access to agency decision-making, but questioned whether the Act, as currently structured and interpreted, was achieving those goals. The group said that the Act has a ''chilling effect on the willingness and ability of agency members to engage in an open and creative discussion of issues.'' It continued:

> In almost all cases, agency members operating under the Act come to a conclusion about a matter * * * without the benefit of any collective deliberations. [Footnote omitted.] This is directly in conflict with the free exchange of views that we believe is necessary to enable an agency member to fulfill adequately his or her delegated duties, and to be held accountable for his or her actions.
>
> We are also of the view that the Act is at odds with the underlying principles of multi-headed agencies. These agencies were created to provide a number of benefits, including collegial decision making where the collective thought process of a number of tenured, independent appointees would be better than one. Unfortunately, the Act often turns that goal on its head, resulting in greater miscommunication and poorer decision making by precluding, as a matter of fact, the members from engaging in decision making in a collegial way. As a result, the Act inadvertently transforms multi-headed agencies into bodies headed by a number of individually acting members. [Footnote omitted.]

The group identified as one problem the issue confronted by the NRC's 1985 rulemaking: that ''many agencies'' avoided the problem of distinguishing between ''preliminary conversations, which are outside of the Act, and deliberations, which trigger the Act,'' by a blanket prohibition, as a matter of general policy, against any conversation among a quorum of agency members, except in ''meetings'' under the Sunshine Act. While such bright-line policies were easy to apply and effective, the letter said, they were often over-inclusive, barring discussion of even the most preliminary views and often impeding the process of agency decision-making.

The Administrative Conference, then soon to be abolished, took up the group's challenge, assembled a special committee to study the Sunshine Act, and convened a meeting in September, 1995, to discuss the Act, its problems, and possible remedies. The Conference appeared to be looking for some compromise, acceptable both to the Federal agencies and to representatives of the media, that would acknowledge the Act's impairment of the collegial process and try to remedy that by giving greater flexibility to agencies in applying the Act. No consensus developed, however. The Administrative Conference, apparently recognizing that there would be no meeting of the minds between critics and defenders of the Sunshine Act, did not pursue its efforts to find common ground.

V. Conclusions

The Commission has taken into account information from a number of quarters, as well as its own experience in implementing the Sunshine Act. It has considered, among other things, the language of the statute and its legislative history; the Supreme Court's decision in the ITT case; Recommendation 84–3 of the Administrative Conference of the United States; the findings of the American Bar Association; actual practice at other federal agencies, including the DNFSB and OSHRC; and the advice letter from numerous Commissioners and former Commissioners of four other independent regulatory agencies.

Based on all of these, the Commission believes that while the Sunshine Act's objectives, which include increasing agency openness and fostering public understanding of how the multi-member agencies do business, are laudable, it is important to recognize exactly what it was that Congress legislated. The legislative history, as the Supreme Court explained, shows that Congress carefully weighed the competing considerations involved: the public's right of access to significant information, on the one hand, and the agencies' need to be able to function in an efficient and collegial manner on the other. Congress struck a balance: it did not legislate openness to the maximum extent possible, nor did it provide unfettered discretion to agencies to offer only as much public access as they might choose. Rather, it crafted a system in which the Sunshine Act would apply only to ''meetings,'' a term carefully defined to exclude preliminary, informal, and informational discussions, and then provided a series of exemptions to permit closure of certain

[2] The text of the amendment and the colloquy surrounding its adoption by the House of Representatives are also reprinted in full in SECY–88–25.

categories of ''meetings.'' Unfortunately, in part because of advice from the Justice Department in 1977 that later proved to be erroneous, the Commission's original Sunshine Act regulations did not give due recognition to the balance contemplated by Congress. Rather, the regulations mistakenly took the approach that every discussion among three or more Commissioners, no matter how far removed from being ''discussions that effectively predetermine official actions,'' in the Supreme Court's words, should be considered a ''meeting.'' 466 U.S. at 471.

At the time that the Commission changed its Sunshine Act rules in 1985, many of its critics appeared to believe that if the rule change were implemented, numerous discussions currently held in public session would instead be held behind closed doors. This was a misapprehension. Indeed, if there is one point that needs to be emphasized above any other, it is that the objective of the 1985 rule is not that discussions heretofore held in public session should become non-Sunshine Act discussions; rather, the focus of the 1985 rule is on the discussions that currently do not take place at all. This was also the focus of the American Bar Association and the authors of the 1995 letter to the Administrative Conference.

The Commission believes that non-Sunshine Act discussions can benefit the agency and thereby benefit the public which the NRC serves. This view did not originate with the Commission by any means. On the contrary, as described above, the starting point of the Commission's analysis is Congress's recognition that '' 'informal background discussions [that] clarify issues and expose varying views' are a necessary part of an agency's work,'' and that to apply the Act's requirements to them would, in the words of the Supreme Court, ''impair normal agency operations without achieving significant public benefit.'' 466 U.S. 463, 469.

For convenience, the currently effective (but not implemented) 1985 rule is included in this notice and the Commission is providing 30 days for public comment on its stated intent to implement the 1985 rule. No non-Sunshine Act discussions will be held during the period for public comment and for a 21-day period following close of the comment period to allow the Commission to consider the public comments. Absent further action by the Commission, non-Sunshine Act discussions may be held commencing 21 days after the close of the comment period.

From previous comments, the following are possible questions about the 1985 rule, and the Commission's responses to those questions.

1. What types of discussions does the Commission have in mind, and what does it seek to accomplish with this rule?

Answer: First and foremost, the Commission would like to be able to get together as a body with no fixed agenda other than to ask such questions as: ''How is the Commission functioning as an agency? How has it performed over the past year? What have been its major successes and failures? What do we see coming in the next year? In the next five years, and ten years? How well are our components serving us? Are we getting our message to the industry we regulate and to the public? Are we working effectively with the Congress?'' This kind of ''big picture'' discussion can be invaluable. One of the regrettable effects of the Sunshine Act, as documented as long ago as 1984, in Administrative Conference Recommendation 84–3, has been the loss of collective responsibility at the agencies, and the shift of authority from Presidentially appointed and accountable agency members to the agencies' staffs. The Commission believes that ''big picture'' discussions served a valuable function in pre-Sunshine Act days at NRC and can do so again, helping to assure that the Commissioners serve the public with maximum effectiveness and accountability.

The Commission believes that some kinds of general, exploratory discussions can be useful in generating ideas. Such ideas, if developed into more specific proposals, will become the subject of subsequent ''meetings.'' The Commission recognizes that it would be incumbent on the participants in such non-Sunshine Act discussions to assure that they remain preliminary and do not effectively predetermine final agency action. The Commission believes that the guidelines proposed by the American Bar Association are the most suitable criteria for assuring compliance with the Act's requirements.

The Commission also believes that spontaneous casual discussions of matters of mutual interest—for example, a recent news story relating to nuclear regulation—can be beneficial, helping both to ensure that Commissioners are informed of matters relevant to their duties and to promote sound working relationships among Commissioners.

2. Is it really clear that the law permits non-Sunshine Act discussions?

Answer: Yes, beyond any reasonable doubt. Congress so provided, a unanimous Supreme Court has so found, the American Bar Association Task Force on the Sunshine Act agreed, the Council of the Administrative Law Section of the American Bar Association adopted the Task Force's views, and the ABA's full House of Delegates accepted the Administrative Law Section's report and recommendation.

3. Didn't the ITT case involve a trip to Europe by less than a quorum of FCC members, and couldn't the case be viewed as relating to those specific facts?

Answer: The case was resolved on two separate grounds. Although the Supreme Court did not have to reach the issue of what constitutes a ''meeting'' under the Sunshine Act, it did so, in order (so the ABA report concluded) to provide guidance to agencies and the courts on a difficult aspect of Sunshine Act law. In addressing the ambiguity in the definition of ''meeting'' and thus the uncertainty as to the Act's scope, the Supreme Court was acting to resolve a problem that had been apparent literally from the day of its enactment into law, as President Ford's statement in signing the bill, on September 13, 1976, makes clear. He wrote:

> I wholeheartedly support the objective of government in the sunshine. I am concerned, however, that in a few instances unnecessarily ambiguous and perhaps harmful provisions were included in S.5. * * * The ambiguous definition of the meetings covered by this act, the unnecessary rigidity of the act's procedures, and the potentially burdensome requirement for the maintenance of transcripts are provisions which may require modification.
> Government in the Sunshine Act—S.5 (P.L. 94–409), Source Book: Legislative History, Text, and Other Documents (1976), at 832.

4. On the meaning of ''meeting'' as used in the Sunshine Act, aren't the views of Congressional sponsors of the legislation entitled to consideration?

Answer: Yes, when they appear in the pre-enactment legislative history. In the present case, for example, the Supreme Court cited the remarks of the House sponsor of the Sunshine Act, Representative Dante Fascell, who introduced the report of the Conference Committee to the House. He explained to his colleagues that the conferees had narrowed the Senate's definition of ''meeting'' in order ''to permit casual discussions between agency members that might invoke the bill's requirements'' under the Senate's approach. 122 Cong. Rec. 28474 (1976), cited at 466 U.S. 463, 470 n.7. Likewise, Senator Chiles, the Senate sponsor of the bill, described the definition of ''meeting'' in the final bill as a ''compromise version.'' 122 Cong. Rec. S15043 (Aug. 31, 1976), reprinted in

Government in the Sunshine Act Source Book. In any case, however, once the Supreme Court has declared what the law requires, federal agencies are bound to follow its guidance.

5. Is there any basis in the legislative history for the notion that non-Sunshine Act discussions are not only permissible, but useful?

Answer: Yes. The point was made forcefully by Professor Jerre Williams (subsequently a judge on the Fifth Circuit Court of Appeals), presenting the views of the American Bar Association. He testified, in Congressional hearings on the bill:

> One of the most critical facets of the American Bar Association view has to do with the definition of ''meeting.'' The ABA firmly agrees that policy must not be determined by informal closed-door caucuses in advance of open meetings. On the other hand, however, the ABA believes it important that ''chance encounters and informational or exploratory discussions'' by agency members should not constitute meetings unless such discussions are ''relatively formal'' and ''predetermine'' agency action.
>
> It should be a matter of concern to all those interested in good government that agency members be allowed to engage in informal work sessions at which they may ''brainstorm'' and discuss various innovative proposals without public evaluation or censorship of their search for new and creative solutions in important policy areas.
>
> All persons who have engaged in policymaking have participated in such informal sessions. Sometimes outlandish suggestions are advanced, hopefully humorous suggestions abound. But out of all this may come a new, creative, important idea. There is time enough to expose that idea to public scrutiny once it has been adequately evaluated as a viable alternative which ought to be seriously considered. [Emphasis added.] Hearings Before a Subcommittee of the Committee on Government Operations, House of Representatives, 94th Cong., First Session (Nov. 6 and 12, 1975), at 114–15.

6. Why is the NRC paying so much attention to the ITT case and ignoring the Philadelphia Newspapers case which dealt specifically with NRC?

Answer: First of all, the ITT case dealt with the issue of what is a ''meeting,'' whereas *Philadelphia Newspapers, Inc.* v. *NRC,* 727 F.2d 1195 (D.C. Cir. 1984). dealt with an unrelated issue: whether a particular ''meeting'' could be closed under the Sunshine Act. Secondly, the ITT case was decided by the Supreme Court, and as such would be entitled to greater weight than the decision of one panel of a Court of Appeals, even if they were on the same issue. Thirdly, the full D.C. Circuit, sitting *en banc,* has severely criticized the Philadelphia Newspapers decision for digressing from Congressional intent and thereby reaching an ''untoward result.'' *Clark-Cowlitz Joint Operating Agency* v. *FERC,* 798 F.2d 499, 503 n.5 (D.C. Cir. 1984).

7. If it is so clear that non-Sunshine Act discussions are permissible, why did the NRC interpret the Act differently for so many years?

Answer: In part, the answer lies in the fact that the Justice Department, in the years 1977 to 1981, took an expansive view of the definition of ''meeting.'' (See the letter from Assistant Attorney General Barbara A. Babcock reprinted in the Interpretive Guide at p. 120.) In contrast, Berg and Klitzman, the authors of the Interpretive Guide, believed that Congress had consciously narrowed the definition. (See the Interpretive Guide at 6–7.) Because the Justice Department defends Sunshine Act suits in the courts, its view of the law's requirements carried considerable weight. The Supreme Court's decision in the ITT case resolved the issue definitively.

8. Didn't the NRC acknowledge in its 1977 rulemaking that it was going beyond the law's requirements in the interest of the Act's ''presumption in favor of opening agency business to public observation''? Why isn't that rationale still applicable today?

Answer: There are at least three factors today that were not present in 1977: (1) the Supreme Court's ITT decision, which makes clear that Congress gave the agencies authority to hold such discussions because it thought they were an important part of doing the public's business; (2) the Administrative Conference recommendation stating that the Sunshine Act has had a much more deleterious effect on the collegial nature of agency decision making than had been foreseen; and (3) the American Bar Association report stating that Congress gave the agencies the latitude to hold non-Sunshine Act discussions in the expectation they would use it, and suggesting that the use of such discussions might help alleviate some of the problems caused by the Sunshine Act. Moreover, the Commission has had the benefit of its own and other agencies' experience under the Act. It should be emphasized that the Commission, by implementing this rule, is not implicitly or explicitly urging that the Sunshine Act be altered; rather, it is saying that the Sunshine Act should not be applied even more restrictively than Congress intended when it enacted the statute.

9. Why does the NRC put such reliance on the ABA report, when the ABA made a point of saying that it was not urging the closing of any meetings now open?

Answer: The question misses the point of the ABA comment. In the context in which the comment appears in the ABA report, it is clear that the ABA was expressing its concern for the discussions that currently do not happen at all, either in open or in closed session, because the Sunshine Act inhibits the initiation of discussions. Its point was similar to that made by Professor Williams in the hearings on the bill in 1975, when he urged that agency members not be deprived of the opportunity to generate ideas in ''brainstorming sessions''—ideas which may subsequently be the subject of ''meetings'' if they turn out to warrant formal consideration. As we have emphasized above, the Commission is not proposing to close any meetings currently held as open public meetings.

10. How does the Commission intend to differentiate between ''meetings'' and ''non-Sunshine Act discussions'?

Answer: The Commission intends to abide by the guidance provided by the Court in *FCC* v. *ITT World Communications* and contained in our regulations, in differentiating between ''meetings'' and non-Sunshine Act discussions. Applying this guidance, the Commission may consider conducting a non-Sunshine Act discussion when the discussion will be casual, general, informational, or preliminary, so long as the discussion will not effectively predetermine final agency action. Whenever the Commission anticipates that a discussion seems likely to be ''sufficiently focused on discreet proposals or issues as to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency,'' the Commission will treat those discussions as ''meetings.'' See id. at 471.

Further, to ensure that we appropriately implement the Supreme Court guidance in differentiating between non-Sunshine Act discussions and meetings, the Commission will consider the ABA's remarks on the seriousness of this task. For instance, the ABA cautioned that a non-Sunshine Act discussion ''does not pose specific problems for agency resolution'' and agency ''members are not deliberating in the sense of confronting and weighing choices.'' Report at 9–11.

Some specific examples of the kinds of topics that might be the subject of non-Sunshine Act discussions would include generalized ''big picture'' discussions on such matters as the following: ''How well is the agency functioning, what are our successes and

failures, what do we see as major challenges in the next five and ten years, what is the state of our relations with the public, industry, Congress, the press?'

Preliminary, exploratory discussions that generate ideas might include, for example, ''Is there more that we could be doing through the Internet to inform the public and receive public input? How does our use of the Internet compare with what other agencies are doing?'' Such ideas, if followed up with specific proposals, would become the subject of later ''meetings'' within the meaning of the Sunshine Act.

Spontaneous, casual discussions of matters of mutual interest could include discussions of a recent news story relating to NRC-licensed activities, or a Commissioner's insights and personal impressions from a visit to a licensed facility or other travel. Under this heading, three Commissioners would be permitted to have a cup of coffee together and to talk informally about matters that include business-related topics. Under the Commission's pre-1985 rule, such informal get-togethers were precluded.

Briefings in which Commissioners are provided information but do not themselves deliberate on any proposal for action could include routine status updates from the staff.

Discussions of business-related matters not linked to any particular proposal for Commission action might include an upcoming Congressional oversight hearing or a planned all-hands meeting for employees.

11. Apart from the issue of the definition of ''meeting,'' are there other changes that the interested public should be aware of?

Answer: Yes, one minor procedural point. The 1985 rule includes a provision stating that transcripts of closed Commission meetings will be reviewed for releasability only when there is a request from a member of the public for the transcript. Reviewing transcripts for releasability when no one is interested in reading them would be a waste of agency resources and thus of the public's money.

12. Will the Commission adopt any particular internal procedures for its non-Sunshine Act discussions?

Answer: For an initial 6-month period of non-Sunshine Act discussions, the Commission will maintain a record of the date and subject of, and participants in, any scheduled non-Sunshine Act discussions that three or more Commissioners attend. After the six-month period, the Commission will revisit the usefulness of the record-keeping practice.

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

The May 21, 1985 (50 FR 20863), rule is currently effective but has never been implemented. For the convenience of the reader, the Commission is republishing the text of that rule.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued 5 U.S.C. ; 31 U.S.C 9701; Pub. L. 99–570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. In § 9.101, paragraph (c) is republished for the convenience of the reader as follows:

§ 9.101 Definitions.

* * * * *

(c) Meeting means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by §§ 9.105, 9.106, or 9.108(c), do not constitute ''meetings'' within this definition.

* * * * *

3. In § 9.108, paragraph (c) is republished for the convenience of the reader as follows:

§ 9.108 Certification, transcripts, recordings and minutes

* * * * *

(c) In the case of any meeting closed pursuant to § 9.104, the Secretary of the Commission, upon the advice of the General Counsel and after consultation with the Commission, shall determine which, if any, portions of the electronic recording, transcript or minutes and which, if any, items of information withheld pursuant to § 9.105(c) contain information which should be withheld pursuant to § 9.104, in the event that a request for the recording, transcript, or minutes is received within the period during which the recording, transcript, or minutes must be retained, under paragraph (b) of this section.

* * * * *

Dated at Rockville, Maryland, this 4th day of May, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11669 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 990416099–9099–01]

RIN 0607–AA32

New Canadian Province Import Code for Territory of Nunavut

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is amending the Foreign Trade Statistics Regulations (FTSR), to add a new Canadian Province/Territory code for the Territory of Nunavut. This Canadian Territory code is being added to the existing Canadian Province/Territory codes used for reporting Canadian Province of Origin information on Customs Entry Records.

EFFECTIVE DATE: The provisions of this rule are effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, DC 20233–6700, by telephone on (301) 457–2255, by fax on (301) 457–2645, or by e-mail at c.h.monk.jr@ccmail.census.gov. For information on the specific Customs reporting requirements contact: Dave Kahne, U.S. Customs Service, Room 5.2C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, by telephone on (202) 927–0159 or by fax on (202) 927–1096.

SUPPLEMENTARY INFORMATION:

Background Information

On November 29, 1996, the U.S. Bureau of the Census (Census Bureau), Department of Commerce, and the U.S. Customs Service (Customs), Department of the Treasury, announced the implementation of the requirements for collecting Canadian Province of Origin information on Customs Entry Records in the **Federal Register** (61 FR 60531). The Supplementary Information contained in that notice fully recounts the development of the program for collecting Canadian Province of Origin information on Customs import

documents. Please refer to that notice for details on the implementation of that program.

The reporting provisions for collecting Canadian Province of Origin information are incorporated in FTSR, 15 CFR 30.80, ''Imports from Canada.'' The Census Bureau is now amending 15 CFR 30.80(d) to add a new Canadian Province/Territory code (XV) for the Territory of Nunavut. The Canadian Province codes are used to report Canadian Province of Origin information on Customs Entry Records required for all U.S. imports that originate in Canada. The Census Bureau is coordinating the implementation of this rule with Customs. This action is taken to fulfill the requirements of the 1987 agreement between the United States and Canada under which the countries agreed to replace their requirements for reporting export data by substituting exchanged import information. The Department of Treasury concurs with the provisions contained in this final rule.

Program Requirements

In order to include the new Canadian Province/Territory code for the Territory of Nunavut, the Census Bureau is revising 15 CFR 30.80(d) to add the code XV for Nunavut to the list of valid Canadian Province/Territory codes.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedures Act because it deals with a foreign affairs function (5 U.S.C. (A) (1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with Federalism implications sufficient to warrant preparation of the Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions 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) of 1995, Pub. L. 104–13, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule covers collection of information subject to PRA provisions, which OMB cleared under Control Number 1515–0065. For further information on the OMB submission, contact Dave Kahne, U.S. Customs Service, Room 5.2C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, by telephone on 202–927–0159 or by fax on 202–927–1096.

This rulemaking will have no impact on the current reporting-hour burden requirements as approved under OMB control number 1515–0065.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

Amendments to 15 CFR Part 30

For the reasons set out in the preamble, the Census Bureau is amending 15 CFR Chapter I, Part 30, as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765.

Subpart F—Special Provisions for Particular Types of Import Transactions

2. Section 30.80 (d) is revised to read as follows:

§ 30.80 Imports from Canada.

* * * * *

(d) The Province of Origin code replaces the Country of Origin code only for imports that have been determined, under applicable Customs rules, to originate in Canada. Valid Canadian Province/Territory codes are:

XA—Alberta
XB—New Brunswick
XC—British Columbia
XM—Manitoba
XN—Nova Scotia
XO—Ontario
XP—Prince Edward Island
XQ—Quebec
XS—Saskatchewan
XT—Northwest Territories
XV—Nunavut
XW—Newfoundland
XY—Yukon

Approved: New Canadian Province Import Code for Nunavut Docket Number 990416099–9099–01.

Dated: April 13, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–11677 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0130]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(2,2,6,6-tetramethyl-4-piperidinyl) sebacate as a thermal/light stabilizer for polymeric adhesives and pressure-sensitive adhesives. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: The regulation is effective May 10, 1999. Submit written objections and request for a hearing by June 9, 1999.

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

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 6, 1998 (63 FR 11263), FDA announced that a food additive petition (FAP 8B4574) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of bis(2,2,6,6-tetramethyl-4-piperidinyl) sebacate as a thermal/light stabilizer for polymeric adhesives and pressure-sensitive adhesives.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in

§ 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4574 (63 FR 11263). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 9, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
Bis(2,2,6,6-tetramethyl-4-piperidinyl) sebacate (CAS Reg. No. 52829–07–9).	For use only: 1. In adhesives complying with § 175.105 of this chapter. 2. At levels not to exceed 0.1 percent by weight of pressure-sensitive adhesives complying with § 175.125 of this chapter.
* * *	* * * *

Dated: May 3, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–11737 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–032]

Drawbridge Operation Regulations; Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District issued a temporary deviation from the drawbridge operation regulations governing the operation of the Middletown Swing Bridge, mile 32.0, across the Connecticut River between Middletown and Portland, Connecticut. The deviation requires the bridge to open on signal only after a two hour advance notice from April 24 through June 21, 1999. The deviation is necessary to facilitate needed repairs to the bridge.

DATES: The deviation is effective from April 24, 1999 through June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Bridge Management Specialist, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Middletown Swing Bridge, mile 32.0, across the Connecticut River has a vertical clearance of 25 feet at mean high water and 27 feet at mean low water in the closed position. The operating regulations for the bridge are in 33 CFR 117.205.

The owner, the Connecticut Department of Transportation (CDOT), requested a temporary deviation from the operating regulations for the Middletown Swing Bridge in order to facilitate necessary structural repairs and painting of the bridge. The work is essential for public safety and continued operation of the bridge.

The deviation requires the bridge, from April 24 through June 21, 1999, between 6 a.m. and 4:30 p.m., to open on signal only after a two hour advance notice is given by calling (508) 726–0456. Vessels that can pass under the bridge without an opening may do so at all times.

The Coast Guard reviewed CDOT's proposed maintenance plan and determined that the time period of the deviation is reasonable given the work that is scheduled to be performed on the bridge.

The deviation from the normal operating regulations was authorized under 33 CFR 117.35.

Dated: April 27, 1999.

R.M. Larrabee,

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

[FR Doc. 99–11587 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–98–170]

RIN 2121–AA97

Safety Zone; Port of New York/New Jersey Fleet Week

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing five safety zones in New York Harbor's Upper Bay and the Hudson River that will be activated annually for the Fleet Week Parade of Ships, for Air and Sea demonstrations, and for the departure of the participating U.S. Navy Aircraft or Helicopter Carrier. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of New York Harbor's Upper Bay and the Hudson River .

DATES: This final rule is effective annually from 8 a.m. on the Wednesday before Memorial Day until 4 p.m. on the Wednesday following Memorial Day.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 24, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM), entitled Safety Zone: Port of New York/New Jersey Fleet Week in the **Federal Register** (64 FR 9107). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date of publication for this regulation's NPRM with 60-day comment period, there was insufficient time to draft and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to pubic interest since immediate action is needed to prevent traffic from transiting a portion of New York Harbor's Upper Bay and Hudson River and provide for the safety of life on navigable waters during this annual event. Additionally, the public was notified of this event when the NPRM was published in the Local Notice of Mariners on March 2, 1999.

Background and Purpose

The Intrepid Sea, Air and Space Museum, Manhattan, NY, sponsors the annual Fleet Week Parade of Ships, as well as associated Sea and Air demonstrations. These events take place annually from the Wednesday before Memorial Day to the Wednesday following Memorial Day on the waters of New York Harbor's Upper Bay and the Hudson River. The Coast Guard expects no more than 500 spectator craft for these events.

Parade of Ships

The Coast Guard is establishing three safety zones for the actual parade of ships on the Wednesday before Memorial Day. The first zone is a moving safety zone for the Parade of Ships to include all waters 500 yards ahead and astern, and 200 yards on each side of the designated column of parade vessels as the column transits the Port of New York and New Jersey from the Verrazano Narrows Bridge to Riverside State Park on the Hudson River between West 137th and West 144th Streets, Manhattan.

The second zone established for the parade of ships expands from the column of parade vessels east to the Manhattan shoreline between Piers 83 and 90. This expansion gives the public an unobstructed view of the parade of ships from the pierside reviewing stand.

The third zone activates as each vessel leaves the parade of ships and proceeds to its berthing area. The moving safety zone will expand to include all waters within a 200-yard radius of each vessel until it is safely berthed.

These three safety zones are effective annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day. They are needed to protect the maritime public from possible hazards to navigation associated with a parade of naval vessels transiting the waters of New York Harbor and the Hudson river in close proximity. These vessels have limited maneuverability and require a clear traffic lane to safely navigate.

Air and Sea Demonstration

The Coast Guard is establishing a safety zone for the Fleet Week Sea and Air demonstrations held on and over the Hudson River between Piers 83 and 90. This safety zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″N 074°00′13″W (NAD 1983), south to approximate position 40°45′54″N 074°00′25″W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall. This safety zone is effective annually from 10 a.m. until 5 p.m., Friday through Monday, Memorial Day weekend. It is needed to protect boaters and demonstration participants from the hazards associated with military personnel demonstrating the capabilities of aircraft and watercraft in a confined area of the Hudson River. This safety zone prevents vessels from transiting only a portion of the Hudson River. Marine traffic will still be able to transit through the western 600 yards of the 950-yard wide Hudson River during the Sea and Air demonstrations. Vessels moored at piers within the safety zone, however, will not be allowed to transit from their moorings without permission from the captain of the Port, New York, during the effective periods of the safety zone. The Captain of the Port does not anticipate any negative impact on recreational or commercial vessel traffic due to this safety zone.

U.S. Navy Vessel Departure

Finally, the Coast Guard is establishing a moving safety zone for the departure of the participating U.S. Navy Aircraft or Helicopter Carrier in this annual event. This safety zone includes all waters 500 yards ahead and astern, and 200 yards on each side of the vessel as it transits the Port of New York and New Jersey from its mooring at the Intrepid Sea, Air and Space Museum, Manhattan, to the COLREGS Demarcation line at Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805). The regulation is effective

annually, on the Wednesday following Memorial Day. Departure time is dependent on tide, weather, and granting of authority for departure by the Captain of the Port, New York. The safety zone is needed to protect the maritime public from possible hazards to navigation associated with a large naval vessel transiting the Port of New York and New Jersey with limited maneuverability in restricted waters. It provides a clear traffic lane for the U.S. Navy ship to safely navigate from its berth. The specific ship which this moving safety zone applies to will be published in the Local Notice to Mariners and broadcast by maritime information broadcasts and facsimile prior to the start of Fleet Week events.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to the proposed rule.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of New York Harbor's Upper Bay and the Hudson River during the event, the effect of this regulation will not be significant for the following reasons: the regulations will be in effect for barely a week a year; the maritime community will receive extensive advance notice through Local Notices to Maritimers, facsimile, and marine information broadcasts; Fleet Week is an annual event with local support; at no time will any of the affected waterways be entirely closed to marine traffic; alternative routes are available for commercial and recreational vessels that can safely navigate the Harlem and East Rivers, Kill Van Kull, Arthur Kill, and Buttermilk Channel; and similar safety zones have been established for several past Fleet Week parades and Sea and Air demonstrations with minimal or no disruption to vessel traffic or other interests in the port. These safety zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

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

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subject in 33 CFR Part 165

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

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 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, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add § 165.163 to read as follows:

§ 165.163 Safety Zones; Port of New York/New Jersey Fleet Week.

(a) The following areas are established as safety zones:

(1) Safety Zone A—(i) *Location.* A moving safety zone for the Parade of Ships including all waters 500 yards ahead and astern, and 200 yards of each

side of the designated column of parade vessels as it transits the Port of New York and New Jersey from the Verrazano Narrows Bridge to Riverside State Park on the Hudson River between West 137th and West 144th Streets, Manhattan.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(2) *Safety Zone B*—(i) *Location.* A safety zone including all waters of the Hudson River between Piers 83 and 90, Manhattan, from the parade column east to the Manhattan shoreline.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(3) Safety Zone C—

(i) *Location.* A moving safety zone including all waters of the Hudson River within a 200-yard radius of each parade vessel upon its leaving the parade of ships until it is safely berthed.

(ii) *Enforcement period.* Paragraph (a)(3)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(4) Safety Zone D—

(i) *Location.* A safety zone including all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″N 074°00′13″W (NAD 1983), south to approximate position 40°45′54″N 074°00′25″W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall.

(ii) *Enforcement period.* Paragraph (a)(4)(i) of this section is enforced annually from 10 a.m. until 5 p.m., from Friday through Monday, Memorial Day weekend.

(5) Safety Zone E—

(i) *Location.* A moving safety zone including all waters 500 yards ahead and astern, and 200 yards on each side of the departing U.S. Navy Aircraft or Helicopter Carrier as it transits the Port of New York and New Jersey from its mooring at the Intrepid Sea, Air and Space Museum, Manhattan, to the COLREGS Demarcation line at Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805).

(ii) *Enforcement period.* Paragraph (a)(5)(i) of this section is enforced annually on the Wednesday following Memorial Day. Departure time is dependent on tide, weather, and granting of authority for departure by the Captain of the Port, New York.

(b) *Effective period.* This section is effective annually from 8 a.m. on the Wednesday before Memorial Day until 4 p.m. on the Wednesday following Memorial Day.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. these personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 29, 1999.

L.M. Brooks,

Captain, U. S. Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 99–11686 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98––006]

RIN 2121–AA97

Security Zone: Dignitary Arrival/ Departure New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones around the Wall Street heliport on the East River and the Marine Air Terminal at La Guardia Airport on Bowery Bay to protect the Port of New York/New Jersey, the President, Vice President, and visiting heads of foreign states or foreign governments during their arrival, departure, and transits to and from the Wall Street heliport and the Marine Air Terminal. This action is necessary to protect visiting dignitaries and the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' visit to New York City. This action establishes permanent exclusion areas that are active only from shortly before the dignitaries' arrival into an area until shortly after the dignitaries' departure from that area.

DATES: This final rule is effective June 9, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 22, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM), entitled Security Zone: Dignitary Arrival/Departure New York, NY in the **Federal Register** (63 FR 70707). The Coast Guard received one letter commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

New York City is often visited by the President and Vice President of the United States, as well as visiting heads of foreign states or foreign governments, on the average of 8 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. These dignitaries arrive at John F. Kennedy, La Guardia, or Newark, New Jersey International Airports. They then transit to either the Wall Street or West 30th Street heliports or they fly directly into the Marine Air Terminal at La Guardia. Due to the sensitive nature of these visits a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard and no opportunity for public comment. Establishing permanent security zones by notice and comment rulemaking gave the public the opportunity to comment on the security zones. This final rule establishes two permanent security zones that could be activated upon request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. § 3056.

The activation of a particular security zone will be announced via facsimile and marine information broadcasts.

Discussion of Comments and Changes

The Coast Guard received one letter commenting on the proposed rule. One change is being made to the proposed rule in response to the comment received.

The comment notified the Coast Guard that the West 30th Street Heliport will not continue to operate from its current location after May 12, 2001, when its lease expires. After this time it will either cease operations entirely, or be moved to Pier 72 or 76.

The comment also stated a community boathouse is scheduled to open in spring, 1999, and a public launch will be established in spring, 2000, within the southern 200 yards of the proposed security zone at the West 30th Street heliport. These facilities are located within the Hudson River Park that runs along the Hudson River from Battery Park City to West 59th Street. The comment noted that boaters using these two facilities probably will not have access to facsimile machines or marine information broadcasts regarding the activation of this security zone.

Finally, the comment requested that the southern boundary be moved approximately 200 yards north to not interfere with the community boathouse and public launch. In response to these concerns the Coast Guard is requesting the security requirements at the West 30th Street heliport be reviewed by the U.S. Secret Service. The West 30th Street security zone is being removed from this rulemaking due to this review process. Upon completion of the security review, proposed regulations for a security zone at this location will be published by a separate rulemaking, if they are still deemed necessary.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard anticipates that these security zones will be activated on an average of 8 times per year. Costs resulting from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators. Although this regulation prevents traffic from transiting through the enacted security zone, the effect of this regulation will not be significant for the following reasons: the limited duration of the security zone, the limited number of instances the zones will be activated, and the extensive notifications that will be made to the local maritime community via facsimile and marine information broadcasts. The activation of either of the two security zones will be for 45 minutes. These security zones have been narrowly tailored to impose the lease impact on maritime interests yet provide the level of security deemed necessary.

Small Entities

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

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Federalism

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination and checklist are not required.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and research the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal governemnt, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimze litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportinately affecting children.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons discussed 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, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add § 165.164 to read as follows:

§ 165.164 Security Zones; Dignitary Arrival/Departure New York, NY.

(a) The following areas are established as security zones:

(1) *Location.* Wall Street heliport: All waters of the East River within the following boundaries: East of a line drawn between approximate position 40°42′01″N 074°00′39″W (east of The Battery) to 40°41′36″N 074°00′52″W (NAD 1983) (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between the northeast corner of Pier 13, Manhattan, and the northwest corner of Pier 2 North, Brooklyn.

(2) [*Reserved*]

(3) *Location.* Marine Air Terminal, La Guardia Airport: All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of La Guardia Airport at approximate position 40°46′47″N 073°53′05″W (NAD 1983) to the Rikers Island Bridge at approximate position 40°46′51″N 073°53′21″W (NAD 1983) and east of a line drawn between the point at the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46′36″N 073°53′31″W (NAD 1983).

(4) The security zone will be activated 30 minutes before the dignitaries' arrival into the zone and remain in effect until 15 minutes after the dignitaries' departure from the zone.

(5) The activation of a particular zone will be announced by facsimile and marine information broadcasts.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply .

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel using siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 23, 1999.

R.E. Bennis,

Captain, Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11685 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH121–2; FRL–6337–5]

Approval and Promulgation of Implementation Plans; Ohio; Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On March 17, 1999, EPA published a direct final rule (64 FR 13070) approving, and an accompanying proposed rule (64 FR 13146) proposing to approve requests to redesignate Lake and Jefferson Counties, Ohio as attaining the sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). At that time EPA also approved and proposed to approve plans for maintaining the SO_2 NAAQS in Lake and Jefferson Counties. These actions were taken in response to an October 26, 1995, request by the State of Ohio. The EPA is withdrawing this direct final rule due to the receipt of an adverse comment on these actions as they relate to Jefferson County. In separate final rules, EPA will (1) announce final action on the Lake County SO_2 redesignation and maintenance plan and, (2) respond to the comments received on the Jefferson County SO_2 redesignation and maintenance plan and announce final action on the redesignation and maintenance plan.

DATES: This withdrawal is made on May 10, 1999.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the following location: Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6036.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 29, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Accordingly, under the authority of 42 U.S.C. 7401 et seq., the direct final rule published on March 17, 1999 (64 FR 13070) is withdrawn. Therefore, the amendments to 40 CFR part 52 which added 52.870(c)(118) and amended 52.1881 (a)(4) and (a)(8) and added 52.1881(a)(13) are withdrawn. The amendment to 40 CFR part 81 which revised the table in § 81.336 entitled Ohio-SO_2 is withdrawn.

[FR Doc. 99–11562 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6338–5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds a total of 10 new sites to the NPL: 7 sites to the General Superfund Section of the NPL and 3 sites to the Federal Facilities Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be June 9, 1999.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these

dockets contain, see section II, ''Availability of Information to the Public'' in the ''Supplementary Information'' portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40

CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on January 19, 1999 (64 FR 2941).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of April 26, 1999, the Agency has deleted 184 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of April 26, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that

the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 184 sites that have been deleted from the NPL, 175 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 424 sites also on the NPL CCL. Thus, as of April 26, 1999, the CCL consists of 599 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund/.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional office.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule, May 1999.''

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the appropriate Regional docket.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets are as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HBS, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 10 sites to the NPL: 7 sites to the General Superfund Section of the NPL and 3 sites to the Federal Facilities Section of the NPL. Table 1 presents the 7 sites in the General Superfund Section and Table 2 contains the 3 sites in the Federal Facilities Section. Sites in each table are arranged alphabetically by State. Please note that EPA is changing the name of the Little Creek Naval Amphibious Base site to Naval Amphibious Base Little Creek. EPA believes this change more accurately reflects the site.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
AL	American Brass	Headland.
IL	DePue/New Jersey Zinc/Mobil Chem Corp	DePue.
LA	Central Wood Preserving Co	Slaughter.
LA	Ruston Foundry	Alexandria.
MO	Armour Road	North Kansas City.
NY	Computer Circuits	Hauppauge.
NY	Stanton Cleaners Area Ground Water Contamination	Great Neck.

Number of Sites Added to the General Superfund Section: 7.

TABLE 2.—NATIONAL PRIORITIES LIST FINAL RULE, FEDERAL FACILITIES SECTION

State	Site name	City/county
MD	Andrews Air Force Base	Camp Springs
MD	Brandywine DRMO	Brandywine
VA	Naval Amphibious Base Little Creek	Virginia Beach

Number of Sites Added to the Federal Facilities Section: 3.

B. Status of NPL

With the 10 new sites added in today's rule, the NPL now contains 1,212 sites (1,056 in the General Superfund section and 156 in the Federal Facilities section). These numbers also reflect the removal of the Del Amo site from the NPL in response to an opinion by the District of Columbia Court of Appeals.

There was a separate proposed rule published on April 23, 1999 (64 FR 19968) that proposes to add 12 new sites to the NPL along with a reproposal of one site. With a rule proposing to add one new site to the NPL published elsewhere in today's **Federal Register**, there are now 63 sites proposed and awaiting final agency action; 56 in the General Superfund section and 7 in the Federal Facilities section. Final and proposed sites now total 1,275.

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The following sites were proposed on January 19, 1999 (64 FR 2950): American Brass, Central Wood Preserving Co., Ruston Foundry, Armour Road, and Stanton Cleaners Area Ground Water Contamination. The Computer Circuits site and the three Federal Facilities Section sites were proposed on July 28, 1998 (63 FR 40247).

For the Ruston Foundry sites, EPA received only comments in favor of placing the site on the NPL. EPA received no comments on the actual scoring of this sites and the Agency has identified no other reason to change the original HRS scores for the site. Therefore, EPA is placing this site on the final NPL at this time.

No comments were received on several sites (American Brass, Armour Road, Central Wood Preserving Co., and Stanton Cleaners Area Ground Water Contamination) and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule, May 1999

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small

entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did

not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Final Rule?

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

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

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

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

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 30, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 and Table 2 of Appendix B to Part 300 are amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county notes(a)
*	*	*
AL	American Brass	Headland.
*	*	*
IL	DePue/New Jersey Zinc/Mobil ChemCorp	DePue.
*	*	*
LA	Central Wood Preserving Co	Slaughter.
*	*	*
LA	Ruston Foundry	Alexandria.
*	*	*
MO	Armour Road	North Kansas City.
*	*	*
NY	Computer Circuits	Hauppauge.
*	*	*
NY	Stanton Cleaners Area Ground Water Contamination	Great Neck.
*	*	*

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county notes(a)
*	*	*
MD	Andrews Air Force Base	Camp Springs.
*	*	*
MD	Brandywine DRMO	Brandywine.
*	*	*
VA	Naval Amphibious Base Little Creek	Virginia Beach.
*	*	*

[FR Doc. 99–11705 Filed 5–7–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 498

[HCFA–3139–F]

RIN 0938–AC88

Medicare Program and Medicaid Programs; Effective Dates of Provider Agreements and Supplier Approvals; Correction

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

ACTION: Correcting amendments.

SUMMARY: This document restores regulations that we inadvertently removed when we published a final rule concerning effective dates for provider agreements and supplier approvals. These regulations were published in the August 18, 1997 issue of the **Federal Register** (62 FR 43931).

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Cathy Johnson, (410) 786–5241.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections established uniform criteria for determining the effective dates of Medicare and Medicaid provider agreements.

Need for Correction

The August 18, 1997 final rule inadvertently removed coding and paragraphs (a)(2) and (a)(3) from § 498.3. These corrections are necessary to restore valid regulations in § 498.3.

List of Subjects in 42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare, Practitioners, providers, and suppliers.

Accordingly, 42 CFR part 498 is corrected by making the following correcting admendments:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF CERTAIN ICFs/MRs AND CERTAIN NFs IN THE MEDICAID PROGRAM

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 498.3, paragraph (a) is revised to read as follows:

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that HCFA makes with respect to the matters specified in paragraph (b) of this section, and that the OIG makes with respect to the matters specified in paragraph (c) of this section. It also specifies, in paragraph (d) of this section, administrative actions that are not subject to appeal under this part.

(2) The determinations listed in this section affect participation in the Medicare program. Many of the procedures of this part also apply to other determinations that do not affect participation in Medicare. Some examples follow:

(i) HCFA's determination to terminate an NF's Medicaid provider agreement.

(ii) HCFA's determination to cancel the approval of an ICF/MR under section 1910(b) of the Act.

(iii) HCFA's determination, under the Clinical Laboratory Improvement Act (CLIA), to impose alternative sanctions or to suspend, limit, or revoke the certificate of a laboratory even though it does not participate in Medicare.

(3) The following parts of this chapter specify the applicability of the provisions of this part 498 to sanctions or remedies imposed on the indicated entities:

(i) Part 431, subpart D—for nursing facilities (NFs).

(ii) Part 488, subpart E (§ 488.330(e))—for SNFs and NFs.

(iii) Part 493, subpart R (§ 493.1844)—for laboratories.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 28, 1999.

Neil J. Stillman,

Deputy Assistant, Secretary for Information Resources Management.

[FR Doc. 99–11510 Filed 5–7–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7712]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
North Dakota:			
Braddock, city of, Emmons County	380260	March 29, 1999	
Chippewa Indian Reservation, Turtle Mountain Band of, Rolette County.	380714	.....do	
Rolette County, unincorporated areas	380101	.....do	
NEW ELIGIBLES—Regular Program			
Georgia:			
Marshallville, city of, Macon County	130536	March 19, 1999	April 3, 1996.
North Carolina:			
[1] Middlesex, town of, Nash County	370445	.....do	January 20, 1982.
Washington:.			
Rainier, town of, Thurston County	530260	March 29, 1999	NSFHA.
REINSTATEMENTS			
Georgia:			
Ivey, town of, Wilkerson County	130420	August 6, 1986 Emerg., June 3, 1986 Reg., June 3, 1986 Susp., March 19, 1999 Rein.	June 3, 1986.
Wisconsin:			
Kohler, village of, Sheboygan County	550426	May 13, 1975 Emerg., April 2, 1991 Reg., April 2, 1991 Susp., March 31, 1999 Rein.	April 2, 1991.
REGULAR PROGRAM CONVERSIONS			
Region II			
New Jersey:			
Ewing, township of, Mercer County	345294	March 9, 1999 Suspension Withdrawn.	March 9, 1999.
Region VI			
Louisiana:			
Delhi, town of, Richland Parish	220155	.....do	Do.
Texas:			
Cameron County, unincorporated areas	480101	.....do	Do.
Mount Pleasant, city of, Titus County	480621	.....do	Do.
Muenster, city of, Cooke County	480767	.....do	Do.
South Padre Island, town of, Cameron County	480115	.....do	Do.
Region IX			
Arizona:			
Yavapai County, unincorporated areas	040093	.....do	Do.
Region II			
New Jersey:			
Barnegat Light, borough of, Ocean County	345280	March 23, 1999 Suspension Withdrawn	March 23, 1999.
Beach Haven, borough of, Ocean County	345282	.....do	Do.
Harvey Cedars, borough of, Ocean County	345296	.....do	Do.
Long Beach, township of, Ocean County	345301	.....do	Do.
Ship Bottom, borough of, Ocean County	345320	.....do	Do.
New York: Barneveld, village of, Oneida County.	361569	.....do	Do.
Region VI			
Oklahoma: Osage County, unincorporated areas	400146	.....do	Do.
Region VIII			
Colorado:			
Larimer County, unincorporated areas	080101	.....do	Do.
Loveland, city of, Larimer County	080103	.....do	Do.
Wyoming:			
East Thermopolis, town of, Hot Springs County	560025	.....do	Do.
Region IX			
California:			
Yolo County, unincorporated areas	060423	.....do	Do.

[1] The Town of Middlesex has adopted the Nash County (CID #370278) Flood Insurance Rate Map dated January 20, 1982 panel 145.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: April 28, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11668 Filed 5–7–99; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amendment 1–298]

Organization and Delegation of Powers and Duties; Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Maritime Administration his authority to make determinations concerning the employment of a vessel in the coastwise trade under section 502 and 503 of the ''Coast Guard Authorization Act of 1998''. Section 502 authorizes the Secretary to issue a certificate of documentation with the appropriate endorsement for employment in the coastwise trade to eligible vessels as a small passenger vessel or an uninspected passenger vessel when, after notice and an opportunity to comment, a determination has been made that the employment of the vessel in coastwise trade will not adversely affect U.S. vessel builders and the coastwise trade business of any person who employs vessels built in the U.S. in that business. Section 503 authorizes the Secretary to revoke endorsements issued under section 502 when, after an opportunity for public comment, a determination has been made that a vessel's employment has substantially changed or has had a negative impact upon U.S. vessel builders or a coastwise trade business that employs vessels built in the United States.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–2811; or Blane Workie, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–4723.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation is delegating to the Maritime Administrator his authority to make determinations under sections 502 and 503 of Public Law 105–383. Under section 502, the Secretary of Transportation may waive the U.S.-built vessel requirements of sections 12106 and 12108 of title 46 of the U.S.C., section 8 of the Act of June 19, 1886 (46 U.S.C. App. 289), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883). Section 502 authorizes the Secretary to issue a ''certificate of documentation'' with the appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel for an eligible vessel authorized to carry no more than 12 passengers for hire. However, the Secretary, after notice and an opportunity for public comment, must determine that the employment of the vessel in the coastwise trade will not adversely affect: (1) United States vessel builders; or (2) the coastwise trade business of any person who employs vessels built in the United States in that business.

The Secretary delegates this authority to make determinations to the Maritime Administrator because the Maritime Administration assists domestic shippers in locating suitable coastwise trade eligible vessels and is best suited to determine the effect and substantiality of vessel waivers of the coastwise trade laws on U.S. vessel builders and U.S.-built vessel coastwise trade businesses, including the economic development of affected ports and communities. The Coast Guard issues vessel documents and endorsements for vessels granted waivers under section 502. See 49 CFR 1.46(d). The Coast Guard and the Maritime Administration will coordinate the processing of requests for waivers under section 502.

Under section 503, the Secretary has the authority to revoke endorsements issued under section 502 when, after an opportunity for public comment, the Secretary makes a determination that the employment of a vessel in the coastwise trade has substantially changed since the issuance of an endorsement under section 502 of Public Law 105–383. The Secretary delegates this authority to make determinations under section 503 to the Maritime Administration for the same reasons given above for delegating the authority to make determinations under section 502. Upon making the determination that the employment of a vessel in the coastwise trade has substantially changed and the vessel is no longer eligible for a coastwise endorsement, the Maritime Administration will coordinate with the Coast Guard for revocation of applicable endorsements.

Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of title V, Public Law 105–383, covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. In § 1.66 (Delegations to Maritime Administrator) the following paragraph (cc) is added at the end thereof.

§1.66 Delegations to Maritime Administrator.

* * * * *

(cc) Carry out the functions and exercise the authority vested in the Secretary to make the necessary determinations concerning the employment of a vessel under sections 502 and 503 of title V, Pub. L. 105–383, titled the Coast Guard Authorization Act of 1998.

Issued at Washington, DC, this 27th day of April, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–11495 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 980923246–9106–02; I.D. 071598A]

RIN 0648-AK20

Fisheries in the Exclusive Economic Zone Off Alaska; Hired Skipper Requirements for the Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS publishes a final rule implementing a change in the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. This action modifies the vessel ownership requirements for quota share (QS) holders wishing to hire skippers to harvest the IFQ allocations derived from QS for Pacific halibut and sablefish in the fixed gear IFQ fisheries. This action is necessary to promote an owner-operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries off Alaska and to further the objectives of the IFQ Program.

DATES: Effective June 9, 1999.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) for this action may be obtained from the Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program is a limited access system for managing the fixed gear fisheries for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) in waters of the exclusive economic zone off Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 (Halibut Act), recommended the IFQ Program, which NMFS implemented in 1995. The IFQ Program is designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based. To this end, various program constraints limit consolidation of QS and ensure that practicing fishermen, rather than investment speculators, retain harvesting privileges. The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) and the IFQ Program implementing regulations prohibit all leasing of IFQ derived from QS in categories B, C, and D (QS which authorizes the harvest but not the processing of IFQ species onboard the vessel) and require that holders of such QS be aboard the vessel harvesting IFQ species during all fishing operations.

An exception to this owner-aboard provision allows initial recipients of B, C, or D category QS to employ a hired skipper to fish their IFQ provided that the QS holder owns the vessel on which the IFQ are being fished. This exception was created to allow fishermen who had operated their fishing businesses with hired skippers before the IFQ Program was implemented to continue operating this way under the IFQ Program. While the IFQ Program promotes an owner-operator fixed gear fishery for sablefish and halibut, this exception allows initial recipients of QS to remain ashore while having their IFQ harvested by a hired skipper. By limiting this exception to initial recipients, the Council designed the hired skipper provision to expire with the eventual transfer of all QS out of the possession of initial recipients.

A problem developed in the first years of the IFQ Program because the regulations do not clearly define vessel ownership. Some initial recipients of QS purchased a nominal interest in a vessel, as little as 1 percent or less, and thereby save the costs of operating a wholly-owned vessel and crew. Although such nominal vessel ownership served the objective of fishing capacity reduction, it compromised the Council's social and economic intent for an owner-operator fishery in which QS holders actually participate in harvesting operations. Also, such nominal vessel ownerships created the potential for excessive loss of crew member jobs.

This action revises the regulations to specify a minimum vessel ownership interest that must be acquired before the QS holder may hire a skipper to harvest the IFQ. Under the new regulations, initial recipients of B, C, or D category QS who wish to hire skippers to fish the IFQ derived from their QS must own a minimum of a 20 percent interest in the vessel on which the IFQ species are being harvested.

QS holders whose applications to hire skippers were approved prior to April 17, 1997, the date of the Council's first review of the analysis of this issue, are exempt from the requirement provided that (1) the QS holder's percentage of ownership in the vessel which the hired skipper will operate does not fall below the percentage held in that vessel at the time he or she had a hired-skipper application approved prior to April 17, 1997, and (2) the QS holder has acquired no additional QS after September 23, 1997, the date of the Council's final action to recommend this regulatory change. A QS holder who held less than a 20 percent interest in a vessel prior to April 17, 1997, must continue to hold at least that percentage in order to be elgible to hire a skipper to fish his or her IFQ on that vessel. Moreover, because an initial recipient of QS may hire a skipper to fish not only the QS acquired as an initial allocation but also any QS acquired through transfer, the maximum amount of QS that can be used under this exemption is the level held prior to September 23, 1997, the date of the Council's final action on this proposal. This restriction assures that only existing business arrangements regarding levels of vessel ownership and QS holdings can use this exemption.

Changes from the Proposed Rule

A sentence has been added to § 679.42(i)(1) and to § 679.42(j) to clarify the means by which a person's vessel ownership is determined. Presently, NMFS requests that vessel ownership be validated by submission of a facsimile of either a U.S. Coast Guard Abstract of Title or a bill of sale. While such documents may be preferable as evidence that a person holds the required minimum percentage of ownership interest, other documents may also provide adequate proof of ownership. Therefore, the regulatory language is amended to clarify that, for purposes of the minimum vessel ownership interest requirements, NMFS requires only that the evidence of ownership be in writing. NMFS will make its determination on the basis of written documentation only. This requirement is to ensure that vessel ownership claims are adequately supported in applications for hired skipper cards.

A more detailed explanation of this action may be found in the preamble to the proposed rule (63 FR 69256, December 16, 1998). The proposed rule invited public comment through January 16, 1999, on the proposed

action. NMFS received no comments on the proposed rule.

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule requires a QS holder to own at least a 20 percent interest in a vessel to hire a skipper to fish his or her IFQ.

What small entities will this rule impact?

Any person who holds an initial allocation of QS, whether an individual or a corporation or a partnership, is allowed by the regulations to hire a skipper to fish the person's IFQ, provided that the QS holder owns the fishing boat on which the IFQ is harvested. This action defines exactly what is meant by ''ownership'' of a boat for purposes of the IFQ Program's hired skipper provisions: To hire a skipper to fish your IFQ, you must own at least 20 percent interest in the boat used to harvest your IFQ. For example, if you wish to hire a skipper to fish your IFQ and you hold only 15 percent ownership interest in your boat, you will have to acquire an additional 5 percent of ownership interest to be able to hire a skipper to fish your IFQ on that boat. Of course, you may still choose to be aboard the vessel when it fishes your IFQ, in which case you need not have any ownership interest in the boat.

Are there any exceptions to the 20–percent minimum ownership interest requirement?

Yes. If you hired a skipper prior to April 17, 1997, on a boat in which you owned less than 20 percent interest, you may continue to hire a skipper to fish your IFQ on that boat as long as you maintain the percentage of interest in the boat that you held on April 17, 1997. For example, if you held 10 percent interest in a boat on April 17, 1997, and had hired a skipper to fish your IFQ from that boat prior to that date, then you may continue to hire a skipper to fish your IFQ from that boat as long as you own no less than 10 percent of the boat. This is the grandfather clause to the 20–percent minimum vessel ownership requirement.

Are there any limitations on the grandfather clause?

Yes. The rule also requires that persons eligible to take advantage of the grandfather clause have acquired no additional QS through transfer after September 23, 1997. The grandfather provision is limited, because, if you are eligible to hire a skipper, you may hire a skipper to fish not only the QS you acquired through initial issuance but also all QS that you acquired thereafter through approved transfer. While allowing for certain business practices that existed prior to April 17, 1997, the Council chose to limit the amount of QS that may be subject to the grandfather clause. For example, if you held 5 percent interest in a boat on which you employed a skipper to fish your IFQ prior to April 17, 1997, you may continue to use a hired skipper on that boat as long as you own no less than 5 percent interest in the boat and have not acquired any additional QS through transfer after September 23, 1997. If you have acquired additional QS after that date, you are no longer eligible to take advantage of the grandfather provision and must acquire additional interest in your boat to equal no less than 20 percent if you wish to hire a skipper to fish your IFQ. You may always fish your IFQ yourself and not be obliged to hold any ownership interest in the boat on which you fish your IFQ.

How will NMFS determine whether a person holds the required minimum percentage of vessel ownership?

NMFS will make that determination on the basis of written documentation submitted with the application for a hired skipper card. That documentation may be in the form of a U.S. Coast Guard Abstract of Title, or of a bill of sale, or other such documentation, as long as the evidence is in writing.

Classification

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

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

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The requirement that QS holders provide written evidence of the percentage of vessel ownership clarifies a collection of information that has been approved by the Office of Management and Budget (OMB) under control number 0648–0272.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The total universe of small entities affected by this proposed action would comprise approximately 6,000 persons who hold initial allocations of QS and are eligible to hire skippers in the IFQ Program. NMFS has no data at present to indicate how many of these persons own their own vessels at the required minimum of 20 percent. Nor does NMFS have data to analyze the amount of financial burden that acquisition of additional ownership would impose on those who at present own less than 20 percent interest in a vessel and wish to hire skippers. The grandfather clause would in part mitigate the impact of the action by allowing those who had hired skippers prior to April 17, 1997, to continue to do so at the percentage of vessel ownership held on that date. However, consistent with Council intent, this action will likely reduce the number of QS holders employing hired skippers. Consequently, it will also affect persons who hire themselves out as skippers for vessels owned by others.

In developing this amendment, the Council considered numerous alternatives to develop an action that would minimize the negative economic impact while addressing the issue of nominal vessel ownership in the IFQ hired skipper provisions. Minimum vessel ownership percentages of 5, 20, 49, and 51 percent were analyzed and reviewed before recommending the present action as resolving the issue in a way least burdensome to the affected entities. Nevertheless, the financial impact of this action could potentially be borne by all initial recipients of QS in categories B, C, or D, as well as by skippers who would hire themselves out to operate vessels in the IFQ fisheries. No comments were received on the Initial Regulatory Flexibility Analysis. A copy of the FRFA analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska fisheries, Reporting and recordkeeping requirements.

Dated: May 4, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 679 is amended as follows:

PART 679–FISHERIES IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.42, revise paragraph (i)(1); remove the first sentence of the

introductory text of paragraph (j) and add two sentences in its place, and add paragraph (j)(5) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(i) * * *

(1) An individual who received an initial allocation of QS assigned to categories B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual owns at least a 20–percent interest in the vessel and is represented on the vessel by a master employed by that individual. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This minimum 20–percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

* * * * *

(j) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations and partnerships.* Except as provided in paragraph (j)(5) of this section, a corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided that the corporation or partnership owns at least a 20– percent interest in the vessel on which its IFQ is fished, and that it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. * * *

* * * * *

(5) A corporation or a partnership that received an initial allocation of QS assigned to categories B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

* * * * *

[FR Doc. 99–11699 Filed 5–7–99, 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 89
Monday, May 10, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–253–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

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 certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require repetitive inspections to detect damage of certain taxi light assemblies, and replacement with a new or serviceable part, if necessary. This proposal also would require eventual replacement of certain taxi light assemblies with improved parts, which would constitute terminating action for the repetitive inspections. This proposal is prompted by a report that a damaged taxi light detached from an airplane and was ingested into the airplane engines. The actions specified by the proposed AD are intended to prevent damage to the taxi light assembly, which could result in detachment of the taxi light assembly from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines.

DATES: Comments must be received by June 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Herron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2672; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–253–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that certain taxi light assemblies mounted on the nose landing gear assemblies of certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes have been found to be damaged. That damage has been attributed to contact between the light assembly and the tow bar during towing operations. Such contact occurs due to the proximity of the taxi lights to the fitting for towing operations. In one incident, a damaged taxi light assembly detached from the airplane, and debris from the taxi light assembly was ingested into both engines of a Boeing Model 737 series airplane during takeoff. That ingestion resulted in a loss of thrust, which forced the flightcrew to make an emergency landing. A damaged taxi light assembly, if not corrected, could result in detachment of the taxi light from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines. Such loss of thrust could result in reduced controllability of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive detailed visual inspections to detect damage (including cracking, corrosion, deformation, or evidence of impact) of certain taxi light assemblies, and replacement with a new or serviceable part, if necessary. The proposed AD also would require eventual replacement of certain taxi light assemblies with improved parts, which would constitute terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the applicable maintenance manual.

Cost Impact

There are approximately 2,857 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,159 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $69,540, or $60 per airplane, per inspection cycle.

It would take approximately 2 work hours per airplane to accomplish the proposed replacement, at an average

labor rate of $60 per work hour. Required parts would cost approximately $549 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $775,371, or $669 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–253–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; that are not equipped with a Grimes Aerospace taxi light assembly having part number (P/N) 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the taxi light assembly, which could result in detachment of the taxi light from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines; accomplish the following:

Initial and Repetitive Inspections

(a) Within 60 days after the effective date of this AD, perform a detailed visual inspection to detect damage (including cracking, corrosion, deformation, or evidence of impact) of the taxi light assembly mounted on the nose landing gear of the airplane. Repeat the inspection thereafter at intervals not to exceed 1 day, until the requirements of paragraph (c) have been accomplished.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as an intensive visual inspection of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying glasses, etc., may be used. Surface cleaning and elaborate access procedures may be necessary.

Replacement

(b) If any damage of the taxi light assembly is detected during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, replace the existing taxi light assembly with a new or serviceable taxi light assembly in accordance with the applicable maintenance manual. If the existing taxi light assembly is replaced with a Grimes Aerospace taxi light assembly having P/N 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA: no further action is required by this AD.

Terminating Action

(c) Within 2 years after the effective date of this AD: Replace the existing taxi light assembly with a Grimes Aerospace taxi light assembly having P/N 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA; in accordance with the applicable maintenance manual. Such replacement constitutes terminating action for the repetitive inspection requirement of paragraph (a) of this AD.

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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: 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

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

Issued in Renton, Washington, on May 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11617 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–18–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Models 737–100, –200, –300, –400, and –500 Series Airplanes; and Model 727–100 and –200 Series Airplanes

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 certain Boeing Models 737–100, –200, –300, –400, and –500 series airplanes, and all Models 727–100 and –200 series airplanes. This proposal would require a one-time inspection to determine the presence and condition of the breather plug in each fuel tank boost pump; and

either installation of a new plug or replacement of the boost pump with a new pump, if necessary. This proposal is prompted by a report that breather plugs were missing from fuel tank boost pumps. The actions specified by the proposed AD are intended to prevent possible ignition of fuel vapor in the fuel boost pump, which could result in a fuel tank explosion in the event of a boost pump internal failure.

DATES: Comments must be received by June 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–18–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that breather plugs were missing from the Argo-Tech/TRW fuel tank boost pumps of two Boeing Model 727 series airplanes. One fuel pump on each airplane was missing its associated breather plug. At another facility, an operator reported finding 2 breather plugs in a test stand filter, which suggests that those plugs may have been removed from boost pumps but not reinstalled.

A breather plug serves as a flame arrestor in the return line from the boost pump to the fuel tank. The purpose of the flame arrestor is to quench a flame front initiated inside the fuel pump and prevent it from propagating back to the fuel tank.

The breather plug on an Argo-Tech/TRW boost pump is retained within the boost pump return line by an adhesive bond. When a boost pump is installed in an airplane, the breather plug is also mechanically retained within the pump return line by a mating surface on the airplane side of the installation. If the pump is removed from the airplane, the plug is secured within the pump by only the adhesive bond. Any failure of that adhesive could result in loss of the breather plug. A loose, damaged, or missing breather plug, if not detected and corrected, could result in possible ignition of fuel vapor in the fuel boost pump and a consequent fuel tank explosion in the event of a boost pump internal failure.

Other Affected Models

Certain Boeing Model 737 series airplanes also are equipped with Argo-Tech/TRW boost pumps, which incorporate the breather plugs; therefore, those airplanes also may be subject to the unsafe condition identified in this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed Boeing Telex M–7200–98–03173, dated October 21, 1998, which describes procedures for a one-time inspection of each fuel tank boost pump to determine the presence and condition of its breather plug. For any plug that is loose, damaged, or missing, the telex provides procedures for either installation of a new breather plug or replacement of the boost pump with a new pump.

Temporary Revision (TR) No. 28–1 to the Argo Overhaul Manual (''Plug-in Booster Pump''), dated November 13, 1998, provides procedures for the installation of breather plugs into fuel tank boost pumps.

Accomplishment of the actions specified in the telex and the TR is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the telex and the TR described previously, except as discussed below.

Differences Between Proposed AD and Telex: Compliance Times

The compliance times recommended in the telex differ from those proposed by this AD. The telex recommends a longer compliance time for inspection of the boost pumps of the main fuel tanks, and the proposed AD would allow a longer compliance time for inspection of the boost pumps of the center and auxiliary fuel tanks.

For the inspections of the boost pumps in the main fuel tanks, the proposed AD would require a 12-month compliance time, whereas the telex recommends accomplishment at the next ''C'' check or within 6,000 flight hours for Model 737 series airplanes. (The telex does not specify a compliance time for inspection of affected Model 727 series airplanes.) The FAA has determined that 12 months would allow operators sufficient time to complete the required inspections of all affected airplanes during regular maintenance, without compromising safety. Further, the FAA has determined that an adequate supply of parts is expected to be available within this compliance time.

For the inspections of the boost pumps of Model 737 center fuel tanks and Model 727 center and auxiliary fuel

tanks, the proposed AD would allow a compliance time longer than that recommended by the telex. (The telex does not specify a compliance time for inspection of Model 727 center fuel tanks.) While the FAA recognizes the unsafe condition identified in this proposed AD, the FAA also finds that the burden that would be imposed on operators by specifying a 30-day compliance time is unjustified. The 6-month compliance time proposed by this AD was determined to be appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of an orderly inspection of the fleet during regular maintenance periods.

In consideration of all of these factors, the FAA has determined that the proposed compliance times would represent an appropriate interval in which the proposed actions could be accomplished within the fleet in a timely manner, and still maintain an adequate level of safety.

Difference Between Proposed AD and Telex: Approved Installation Method

In addition, operators should note that, although the telex recommends that the manufacturer be contacted for instructions regarding installation of breather plugs, if necessary, this proposal would require such installation to be accomplished in accordance with Argo Overhaul Manual TR 28–1. (The proposed AD would optionally require replacement of the pump with a new pump, in accordance with Boeing maintenance manual procedures.)

Cost Impact

There are approximately 2,477 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,345 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per boost pump to accomplish the proposed inspection at an average labor rate of $60 per work hour. (There are 6 boost pumps in the center and main fuel tanks on Model 737 series airplanes, 8 boost pumps in the center and main fuel tanks on Model 727 series airplanes, and 2 boost pumps in each auxiliary fuel tank, which may be installed on some affected airplanes of both models.) Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $120 per boost pump.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–18–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes that are equipped with Argo-Tech/TRW fuel boost pumps; and all Model 727–100 and –200 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 (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 possible ignition of fuel tank vapor in the fuel boost pump, which could result in a fuel tank explosion, accomplish the following:

Inspection and Corrective Actions

(a) Perform a one-time detailed inspection to detect discrepant breather plugs (including loose, damaged, and missing plugs) in the fuel tank boost pumps, at the time specified in paragraph (a)(1) or (a)(2), as applicable, of this AD; in accordance with Boeing Telex M–7200–98–03173, dated October 21, 1998. If any discrepancy is detected, prior to further flight, either install a new breather plug in accordance with Temporary Revision (TR) No. 28–1 of the Argo Overhaul Component Maintenance Manual, dated November 13, 1998; or replace the boost pump with a new pump, in accordance with procedures specified in section 28–22–41 of the Boeing 737 Airplane Maintenance Manual (AMM) or Section 28–22–21 of the Boeing 727 AMM, as applicable.

(1) For center fuel tanks installed on Model 737 series airplanes, and for auxiliary fuel tanks installed on Model 727 and 737 series airplanes: Inspect within 6 months after the effective date of this AD.

(2) For main fuel tanks installed on Model 737 series airplanes, and for center and main fuel tanks installed on Model 727 series airplanes: Inspect within 12 months after the effective date of this AD.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane an Argo-Tech/TRW fuel boost pump, unless that pump has been inspected and applicable corrective actions have been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11615 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 99N–0922]

Obstetrics and Gynecology Devices; Proposed Requirement for Premarket Approval and Change in Classification of Glans Sheath Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the glans sheath medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury intended to be eliminated or reduced by requiring the device to meet the statute's approval requirements as well as the benefits to the public from the use of the device. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of the device based on new information. This action is being taken to establish that there is sufficient information to provide reasonable assurance of the safety and effectiveness of this type of device.

DATES: Written comments by August 9, 1999; requests for a change in classification by May 26, 1999.

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

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices have been, or are being, classified by FDA. For convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as ''preamendments devices.''

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after the effective date of the final rule FDA issues requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA or PDP for the device. At that time, an IDE must be submitted only if a PMA has not been submitted or a PDP has not been declared completed.

Section 515(b)(2)(A) of the act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity to submit comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 513(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days after the effective date of the final rule or 30 months after FDA's final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the glans sheath device.

The act does not permit an extension of the 90-day period after the effective date of the final rule, within which an

application or a notice is required to be filed. The House Report on the amendments states that ''the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval'' (H. Rept. 94–853; 94th Cong., 2d sess. 42 (1976)).

The Safe Medical Devices Act of 1990 (the SMDA) added section 515(i) to the act requiring FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures of section 515(i) of the act. Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i) of the act, i.e., that preamendments class III devices for which PMA's or notices of completed PDP's have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of glans sheath devices.

A. Classification of the Glans Sheath Device(s)

In the **Federal Register** of December 29, 1994 (59 FR 67185), FDA issued a final rule classifying glans sheath devices into class III. The preamble to the proposal to classify these devices (57 FR 42908, September 17, 1992) included the recommendation of the Obstetrics-Gynecology Devices Panel (the Panel), an FDA advisory committee, which met on March 7, 1989, regarding the classification of these devices (Ref. 1). During that meeting, the Panel concluded that ''glans cap'' devices, whose generic description FDA later changed to glans sheath devices (59 FR 67185), were a different type of generic device than were condom devices classified at 21 CFR 884.5300. The Panel recommended that glans sheath devices be classified into class III, and identified certain risks to health presented by the devices. The Panel believed that the devices presented a potential unreasonable risk to health and that insufficient information existed to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices or that application of special controls would provide such assurance.

FDA agreed with the Panel's recommendations and proposed that glans sheath devices be classified into class III (57 FR 42908). The proposal stated that FDA believed that general controls, or special controls, such as postmarket surveillance, the development of guidelines, the establishment of a performance standard, or other actions, are insufficient to provide reasonable assurance of the safety and effectiveness of the devices. The proposal stated that FDA believes that such devices present a potential unreasonable risk of illness or injury and that, in the absence of valid scientific evidence in the literature from published studies or test and clinical data that demonstrate the biocompatibility of materials, or that measure performance characteristics, such as slippage, bursting, and tearing, the devices should be subject to premarket approval to ensure the safety and effectiveness of the devices.

In the **Federal Register** of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval for 31 class III preamendments devices. Among other items, the notice described the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act for issuing final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document which updated its priorities and set forth the agency's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required PMA approval. Although glans sheath devices were not included in the lists of devices identified in these notices and the strategy paper, using the factors set forth in these documents, FDA has recently determined that glans sheath devices identified in § 884.5320 (21 CFR 884.5320) have a high priority for initiating a proceeding for requiring premarket approval because the safety and effectiveness of these devices have not been established by valid scientific evidence as defined in (§ 860.7 (21 CFR 860.7)). Moreover, FDA believes that insufficient information exists to assess the safety and effectiveness of glans cap devices in preventing pregnancy and to derive reported failure or pregnancy rates based upon usage of the devices. FDA also believes that failure of the devices, which do not protect the shaft and foreskin of the penis against infection, may result in the release of infected semen into the vagina or otherwise result in the transmission of disease. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the glans sheath have an approved PMA or declared completed PDP.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the glans sheath device within 90 days after the effective date of any final rule issued on the basis of this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the glans sheath during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period of a PMA beyond 180 days unless the agency finds that ''* * * the continued availability of the device is necessary for the public health.''

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any glans sheath device which is: (1) Not legally on the market on or before that date; or (2) legally on the market on or before that date but for which a PMA or notice of completion of PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA, notice of completion of a PDP, or an IDE application for a glans sheath device is not submitted to FDA within 90 days after the effective date of any final rule FDA may issue requiring premarket approval for the devices, commercial distribution of the devices must cease. FDA , therefore, cautions that for manufacturers not planning to

submit a PMA or notice of completion of a PDP immediately, IDE applications should be submitted to FDA, at least 30 days before the end of the 90-day period after the effective date of the final rule that is published to minimize the possibility of interrupting all availability of the device. FDA considers investigations of glans sheath devices to pose a significant risk as defined in the IDE regulation.

C. Description of the Device

The glans sheath device is a sheath which covers only the glans penis or part thereof, and may also cover the area in the immediate proximity thereof, the corona and frenulum, but not the entire shaft of the penis. It is indicated only for the prevention of pregnancy and not for the prevention of sexually transmitted diseases (STD's).

FDA considers the use of glans sheath devices for preventing the transmission of STD's, such as, acquired immunodeficiency syndrome (AIDS) caused by the human immunodeficiency virus (HIV) from HIV-infected semen or vaginal secretions, to constitute investigational use of the device. Any glans sheath device in interstate commerce that is used, or that is labeled or promoted to be used, for preventing the transmission of STD's must already have in effect an approved IDE, or an approved PMA or declared completed PDP.

D. Proposed Findings with Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the glans sheath to have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the device.

E. Risk Factors

Glans sheath devices are associated with the following risks:

1. Pregnancy

Undesired pregnancy could occur if the device leaks, breaks, or dislodges during intercourse. For women for whom pregnancy is contraindicated due to medical conditions such as heart disease or diabetes mellitus, the risk of an unwanted pregnancy can be severe, even life threatening (Ref. 2). A search of the literature found no published studies or controlled clinical data which demonstrated the safety and effectiveness of the glans sheath device, or the expected failure or pregnancy rates for use of the glans sheath. Additionally, no testing or clinical study data were available regarding leakage, breakage, or dislodgement of glans sheaths during intercourse. References to this type of device in the literature described it as an unsafe method of contraception (Refs. 3 and 4).

2. Transmission of Diseases

If the device fails due to leakage, breakage, or dislodgement during intercourse, contact with infected semen or vaginal secretions containing infectious agents could result in the transmission of STD's, including AIDS, hepatitis B, cytomegalovirus infection, syphilis, and disseminated gonorrhea (Refs. 5 through 8). Organisms causing these systemic infections remain viable in the blood stream rendering almost all body fluids and semen infectious. The HIV virus causing AIDS has been isolated from infected blood, saliva, vaginal secretions, and semen. Semen from infected persons has been shown to be an important vehicle in spreading the disease (Refs. 5 through 8).

3. Adverse Tissue Reaction

Materials and substances that comprise the glans sheath could cause local tissue irritation and sensitization or systemic toxicity when the device contacts the glans penis or vaginal and cervical mucosa. Because of such intended contact, testing the biocompatibility of materials and substances that comprise the glans sheath is essential to provide reasonable assurance of the device's safety.

F. Benefits of the Device

The glans sheath covers only the glans penis or part thereof, and may also cover the area in the immediate proximity thereof, the corona and frenulum, so it may be acceptable to those individuals who would not otherwise use a full-sheath condom. The glans sheath may be an alternate preferred method of contraception which, arguably, may serve to increase penile stimulation by reducing the degree of interference and loss of sensitivity attributed to the use of contraceptives, in particular, in comparison to the use of full-sheath condoms. FDA has concluded from a review of the scientific literature that the safety and effectiveness of the glans sheath device for contraceptive use for the prevention of pregnancy have not been established by valid scientific evidence as defined in § 860.7.

II. PMA Requirements

A PMA for the glans sheath device must include the information required by section 515(c)(1) of the act and § 814.20 (21 CFR 814.20) of the procedural regulations for PMA's. Such a PMA should include a detailed discussion of the risks as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in the proposal (57 FR 42908); (2) the effectiveness of the specific glans sheath that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence as defined in § 860.7 and should be obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the particular glans sheath for its intended use. In addition to the basic requirements described in § 814.20(b)(6)(ii) for a PMA, it is recommended that such studies employ a protocol that meets the criteria described in the following paragraphs.

Applicants should submit any PMA in accordance with FDA's ''Premarket Approval Manual.'' This manual is available on the world wide web at ''http://www.fda.gov/cdrh/dsma/manuals.html''.

A. General Protocol Requirements

Glans sheath devices should be evaluated in a prospective, randomized, clinical trial that uses adequate controls. The study must attempt to answer all of the questions concerning safety and effectiveness of the devices, including the risk to benefit ratio. The questions should relate to the pathophysiologic effects which the devices produce, as well as the primary and secondary variables analyzed to evaluate safety and effectiveness. Study endpoints and study success must be defined.

Biocompatibility testing for new material and/or the finished devices should be performed according to the Office of Device Evaluation (ODE) blue book memorandum #G95–1 entitled ''Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing''' (Ref. 9). This memorandum includes the FDA-modified matrix that designates the type of testing needed for various medical devices. The memorandum is available upon request from CDRH's Division of Small Manufacturers Assistance (address above) and is also available on the world wide web at ''http://www.fda.gov/cdrh/g951.html''. The following tests should be considered: Cytotoxicity, sensitization, mucosal irritation, acute systemic

toxicity, mutagenicity, and implantation (90 day).

Specific considerations include the following:

1. The selection of materials to be used in device manufacture and their toxicological evaluation should initially take into account a full characterization of the materials, such as chemical composition of components, known and suspected impurities, and processing. Any surface coatings to be applied are to be fully characterized, including materials, physical specifications, and application processes.

2. The materials of manufacture, the final product, and possible leachable chemicals or degradation products should be considered for their relevance to the overall toxicological evaluation of the devices.

3. Any in vitro or in vivo experiments or tests must be conducted according to recognized good laboratory practices followed by an evaluation by competent informed persons.

4. Any change in chemical composition, manufacturing process, physical configuration or intended use of the devices must be evaluated with respect to possible changes in toxicological effects and the need for additional testing.

5. The biocompatibility evaluation performed in accordance with the guidance should be considered in conjunction with other information from other nonclinical studies and postmarket experiences for an overall safety assessment.

Guidance concerning the type of information that should be provided regarding materials, finished product, processing, testing, and labeling may be found in the Office of Device Evaluation's draft guidance entitled ''Testing Guidance For Male Condoms Made From New Material,'' June 29, 1995 (Ref. 10). This guidance is available upon request from CDRH's Division of Small Manufacturers Assistance and is also available on the world wide web at ''http://www.fda.gov/cdrh/ode/oderp455.html''. The following types of information should be provided:

1. The identity of resin manufacturers.

2. The chemical composition and specifications for raw materials, including molecular weight and molecular weight distribution, and a description of the quality control testing performed.

3. A complete description of the chemical composition and specifications for the finished device, including the molar ratio of component monomers for fabricating the finished material(s), physical characteristics (length, width, thickness, etc.).

4. The chemical composition and specifications for any retention ring materials, lubricants, or dusting agent.

5. Details on the processes used to manufacture the finished device to include: A flow diagram for all aspects of manufacturing and points where in-process quality assurance testing is performed, and descriptions of process control parameters, handling and/or reworking procedures for product that fails in-process quality assurance tests, procedures for adding lubricants and/or dusting agents, and packaging procedures.

6. Data from physical testing conducted on the finished device using appropriate sampling procedures and established performance limits and tolerances, to include tensile strength, force at break (vulnerability to puncture), elongation (elasticity), tear resistance, and other measures of flexural characteristics.

7. If a shelf-life period or expiration date is stated in device labeling, data from accelerated and/or real time testing of the packaged product, including lubricants and other agents, demonstrating the physical and mechanical integrity of the device for the shelf-life or expiration date period claimed in labeling.

8. Labeling providing: A complete description of the device, indications, adequate directions for use, and full disclosure of the safety and effectiveness findings from preclinical and clinical studies, including the recommended use of a pregnancy rate table and the disclosure that the product does not protect against HIV infection and other STD's. (See FDA guidance entitled ''Uniform Contraceptive Labeling,'' July 23, 1998, which is available from CDRH's Division of Small Manufacturers Assistance (address above) and is also available on the world wide web at ''http://www.fda.gov/cdrh/ode/contrlab.html''.)

Examples of questions to be addressed by the clinical studies include, but are not limited to, the following:

1. What are the findings of preliminary studies conducted to evaluate the clinical performance (slippage and breakage) and the acceptability for use of the glans sheath device, including incidents of genital irritation or other adverse occurrences?

2. What breakage, slippage, partial slippage, dislodgement and adverse reaction data and rates are derived from the clinical trial(s) studying slippage and breakage, and what are the design and statistical analysis particulars of the trial(s), including whether the study followed a randomized, cross-over design and what patient population, inclusion/exclusion criteria, sample size, and statistical analysis models were chosen?

3. What pregnancy, breakage, slippage, and adverse event data and rates are derived from the clinical trial(s) evaluating the safety, effectiveness, and ease of use of the glans sheath device, and what are the design and statistical analysis particulars of the clinical study(ies), including whether the study(ies) followed a randomized controlled design, and what number of menstrual cycles of product use, population size, inclusion/exclusion criteria, sample size, and statistical analysis models were chosen?

Statistically valid investigations should include a clear statement of the objectives, method of selection of subjects, nature of the control group, effectiveness and/or safety parameters, method of analysis, and presentation of statistical results of the study. Appropriate rationale, supported by background literature on previous uses of the particular glans sheath device and proposed mechanisms for its effect, should be presented as justification for the questions to be answered, and the definitions of study endpoints and success. Clear study hypotheses should be formulated based on this information.

B. Study Sample Requirements

The subject population should be well defined. Ideally, the study population should be as homogeneous as possible in order to minimize selection bias and reduce variability. Otherwise, a large population may be necessary to achieve statistical significance. Justification must be provided for the sample size used to show that a sufficient number of patients were enrolled to attain statistically and clinically meaningful results. Eligibility criteria for the subject population should include the subject's potential for benefit, the ability to detect a benefit in the subject, the absence of both contraindications and any competing risk, and assurance of subject compliance. In a heterogeneous sample, stratification of the patient groups participating in the multi-center clinical study may be necessary to analyze homogeneous subgroups and thereby minimize potential bias. All endpoint variables should be identified, and a sufficient number of patients from each subgroup analysis should be included to allow for stratification by pertinent demographic characteristics.

The investigations should include an evaluation of comparability between

treatment groups and control groups (including historical controls). Baseline (e.g., age, gender, etc.) and other variables should be measured and compared between the treatment and control groups. The baseline variables should be measured at the time of treatment assignment, not during the course of the study. Other variables should be measured during the study as needed to completely characterize the particular device's safety and effectiveness.

C. Study Design

All potential sources of error, including selection bias, information bias, misclassification bias, comparison bias, or other potential biases should be evaluated and minimized. The study should clearly measure any possible placebo effect. Treatment effects should be based on objective measurements. The validity of these measurement scales should be shown to ensure that the treatment effect being measured reflects the intended uses of the particular device.

Adherence to the protocol by subjects, investigators, and all other individuals involved is essential and requires monitoring to assure compliance by both patients and practitioners. Subject exclusion due to dropout or loss to followup greater than 20 percent may invalidate the study due to bias potential; therefore, initial patient screening and compliance of the final subject population will be needed to minimize the dropout rate. All dropouts must be accounted for and the circumstances and procedures used to ensure patient compliance must be well documented.

Endpoint assessment cannot be based solely on statistical value. Instead, the clinical outcome must be carefully defined to distinguish between the evaluation of the proper function of the device versus its benefit to the subject. Statistical significance and effectiveness of the device must be demonstrated by the statistical results. However, under certain restricted circumstances, a clinically significant result may be documented without statistical significance.

Observation of all potential adverse effects must be recorded and monitored throughout the study and the followup period. All adverse effects must be documented and evaluated.

D. Statistical Analysis Plan

The involvement of a biostatistician is recommended to provide proper guidance in the planning, design, conduct, and analysis of a clinical study. There must be sufficient documentation of the statistical analysis and results including comparison group selection, sample size justification, stated hypothesis test(s), population demographics, study site pooling justification, description of statistical tests applied, clear presentation of data, and a clear discussion of the statistical results and conclusions.

In addition to this generalized guidance, the investigator or sponsor is expected to incorporate additional requirements necessary for a well-controlled scientific study. These additional requirements are dependent on what the investigator or sponsor intends to measure or what the expected treatment effect is based on each device's intended use.

E. Clinical Analysis

The analysis which results from the study should include a complete description of all the statistical procedures employed, including assumption verification, pooling justification, population selection, statistical model selection, etc. If any procedures are uncommon or derived by the investigator or sponsor for the specific analysis, an adequate description must be provided of the procedure for FDA to assess its utility and adequacy. Data analysis and interpretations from the clinical investigation should relate to the medical claims.

F. Monitoring

Rigorous monitoring is required to assure that the study procedures are collected in accordance with the study protocol. Attentive monitors, who have appropriate credentials and who are not aligned with patient management or otherwise biased, contribute prominently to a successful study.

III. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA and must follow the procedures outlined in section 515(f) of the act. A PDP should provide: (1) A description of the device; (2) preclinical trial information (if any); (3) clinical trial information (if any); (4) a description of the manufacturing and processing of the device; (5) the labeling of the device; and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought. FDA's current thinking on the PDP process and the relative duties and responsibilities of the agency and applicant is provided in the draft guidance entitled ''Guidance for Industry—Contents of a Product Development Protocol; Draft.'' This draft guidance is available on the world wide web at ''http://www.fda.gov/cdrh/pdp/pdp.html''.

IV. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under authority of section 513(e) of the act.

A request for a change in the classification of the glans sheath device is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by May 26, 1999.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the glans sheath is submitted, FDA will, by July 9, 1999 after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

V. References

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

1. Transcripts of the Obstetrics-Gynecology Devices Panel meeting, March 7, 1989.

2. Willson, J., and E. Carrington, *Obstetrics and Gynecology*, C. V. Mosby Co., chs. 22 and 27, 1987.

3. ''Other Methods, Past, Present and Future * * * American, or Grecian Tips,'' in ''Sex With Health The Which? Guide to Contraceptives, Abortion and Sex-related Diseases,'' published by Consumers' Association (British), November 1974.

4. Peel, J., and M. Potts, ''The Condom,'' in ''Textbook of Contraceptive Practice,'' Cambridge University Press, p. 58, 1969.

5. ''Leads from the MMWR Morbidity and Mortality Weekly Report * * * 'Heterosexual

Transmission of Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus,''' *Journal of the American Medical Association*, 254(15): pp. 2051 to 2054, 1985.

6. Winklestein, Jr., W. et al., ''Sexual Practices and Risk of Infection by the Human Immunodeficiency Virus,'' *Journal of the American Medical Association*, 253(3): pp. 321 to 325, 1987.

7. Stone, K. M. et al., ''Primary Prevention of Sexually Transmitted Diseases,'' *Journal of the American Medical Association*, 255(13): pp. 1763 to 1766, 1986.

8. Peterman, T. A., and J. W. Curran, ''Sexual Transmission of Human Immunodeficiency Virus,'' *Journal of the American Medical Association*, 256(16): pp. 2222 to 2226, 1986.

9. ''Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing,''' ODE ''Blue Book,'' General Program Memorandum #G95–1, FDA, Center for Devices and Radiological Health, Office of Device Evaluation, Rockville, MD 20857, May 1, 1995.

10. ''Testing Guidance for Male Condoms Made From New Materials,'' FDA, Center for Devices and Radiological Health, Office of Device Evaluation, Obstetrics–Gynecology Devices Branch, Rockville, MD 20857, June 29, 1995.

VI. Environmental Impact

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

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA believes that only one firm, which previously distributed a glans sheath type of device in 1989, may be affected and required to submit a PMA at a cost of approximately $1.2 million. However, because this type device has been classified into class III since December 29, 1994, and any manufacturer of this device that was legally in commercial distribution before May 28, 1976, or found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing during FDA's review of the PMA or notice of completion of the PDP, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The burden hours required for § 884.5320(c) are included in the collection entitled ''Premarket Approval of Medical Devices—21 CFR Part 814,'' submitted on January 27, 1999 (64 FR 4112), for OMB approval.

IX. Submission of Comments with Data

Interested persons may, on or before August 9, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before May 26, 1999 submit to the Dockets Management Branch a written request to change the classification of the glans sheath. Two copies of any request are to be submitted except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5320 is amended by revising paragraph (c) to read as follows:

§ 884.5320 Glans sheath.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule in the **Federal Register**), for any glans sheath that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule in the **Federal Register**) been found to be substantially equivalent to a glans sheath that was in commercial distribution before May 28, 1976. Any other glans sheath shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: April 30, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–11733 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Parts 0, 16, 20, and 50

[AG Order No. 2218–99]

RIN 1105–AA63

Federal Bureau of Investigation, Criminal Justice Information Services Division Systems and Procedures

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Department of Justice (DOJ) proposes amending DOJ regulations relating to criminal justice information systems of the Federal Bureau of Investigation (FBI) to address the following programmatic and nomenclature changes: to permit access to criminal history record information (CHRI) and related information, subject to appropriate controls, by a private entity under a specific agreement with an authorized governmental agency to perform an administration of criminal justice function (privatization); to

permit access to CHRI and related information, subject to appropriate controls, by a noncriminal justice governmental agency that is performing criminal justice dispatching functions or data processing/ information services for a criminal justice agency; to acknowledge access to CHRI and related information by the National Instant Criminal Background Check System (NICS) under the Brady Handgun Violence Prevention Act of 1993; to add express authority for the Director of the FBI from time to time to determine and establish revised fee amounts; and to modernize language to ensure that the regulations accurately reflect current FBI practices, names of systems and programs, and addresses.

DATES: Written comments must be received on or before June 9, 1999.

ADDRESSES: All comments concerning this proposed rule should be mailed to: Mr. Harold M. Sklar, Attorney-Advisor, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

FOR FURTHER INFORMATION CONTACT: Mr. Harold M. Sklar, Attorney-Advisor, telephone number (304) 625–2000.

SUPPLEMENTARY INFORMATION: The FBI manages two systems for the exchange of criminal justice information: the National Crime Information Center (NCIC) and the Fingerprint Identification Records System (FIRS). This rule proposes changes to regulations relating to CHRI and related information maintained in these systems. The changes proposed in this rule fall into five categories, discussed below.

1. Access to CHRI and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized.

In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to perform properly services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

2. Access to CHRI and Related Information, Subject to Appropriate Controls, by a Noncriminal Justice Governmental Agency Performing Criminal Justice Dispatching Functions or Data Processing/Information Services for a Criminal Justice Agency. Noncriminal justice governmental agencies are sometimes tasked to perform dispatching functions or data processing/information services for criminal justice agencies as part, albeit not a principal part, of their responsibilities. Although such delegated tasks involve the administration of criminal justice, the performance of those tasks does not convert an otherwise noncriminal justice agency into a criminal justice agency. This regulation authorizes the delegation of such tasks to noncriminal justice agencies if done pursuant to executive order, statute, regulation, or inter-agency agreement. In this context, the noncriminal justice agency is servicing the criminal justice agency by performing an administration of criminal justice function and is permitted access to CHRI to accomplish that limited function. We propose to revise 28 CFR 20.33(a)(6) and the appendix in order to confirm the authority of these noncriminal justice governmental agencies to receive CHRI and related information when approved by the FBI, subject to appropriate controls that may be imposed by the FBI.

3. Access to CHRI and Related Information by the National Instant Criminal Background Check System (NICS). The Brady Handgun Violence Prevention Act of 1993, Public Law 103–159, provides for the establishment of a National Instant Criminal Background Check System (NICS). Prior to transferring a firearm to a non-licensee, a federal firearm licensee must check the NICS (via a criminal justice agency) to see if the prospective transferee is prohibited under federal or state law from possessing a firearm. Because CHRI may contain information relevant to determining if possession of a firearm by a person is prohibited, the NICS will execute an NCIC check as part of each NICS query. Follow-up access to

the FIRS may also be necessary to resolve questions of identity. We propose to revise 28 CFR 20.33(a)(5) to confirm authority for the dissemination of CHRI and related information to criminal justice agencies for the conduct of background checks under the NICS.

4. Authority for the Director of the FBI Periodically To Revise Fee Amounts. Part 16, subpart C of title 28 of the Code of Federal Regulations establishes procedures by which an individual may obtain a copy of his or her identification record to review and may request a change, correction, or update to that record. Under 28 CFR 16.33, an individual requesting production of his or her identification record pays a fee of $18 for each such request. The authority for this fee is the Independent Offices Appropriation Act (31 U.S.C. 9701), as implemented by guidelines issued by the DOJ, *User Fee Program* (Supplement, *Department of Justice Budget Formulation and Execution Calls*), and Office of Management and Budget (OMB) Circular Number A–25, Revised (July 8, 1993). These authorities generally require that a benefit or service provided to or for any person by a federal agency be self-sustaining to the fullest extent possible, that charges be fair and equitable, and that fee amounts be periodically reassessed and adjusted as warranted.

We propose to revise 28 CFR 16.33 by adding express authority for the Director of the FBI from time to time to determine and establish a revised fee amount. The exercise of this authority by the Director of the FBI will be subject to all applicable laws, regulations, or directions of the Attorney General of the United States, and the Director of the FBI will publish in the **Federal Register** appropriate notice of revised fee amounts.

5. Update of Nomenclature and Addresses. Throughout the parts of title 28 affected by this proposed rule, the language is modernized to reflect accurately current FBI practices, the current names of systems and programs, and the name and address of the new FBI facility in West Virginia where the systems are located. The broader term ''fingerprints'' has been substituted for ''fingerprint cards'' to encompass both ''hard copy'' fingerprint cards as well as the electronic submission of fingerprint data. The term ''fingerprints'' is further intended to encompass not only all depictions of physical fingerprints (for example, inked images, electronic images, and electronic encoding) but also all related biographical or other information typically appearing on a fingerprint card. The terms ''computerized criminal history'' and ''CCH'' are changed to ''Interstate Identification Index'' and ''III.'' The FBI ''Identification Division'' is changed to ''Criminal Justice Information Services Division'' or ''CJIS.'' ''NCIC Advisory Policy Board'' is changed to ''CJIS Advisory Policy Board.'' Minor modifications are being made to the definitions in 28 CFR part 20, subpart A; definitions are being added for the terms ''Control Terminal Agency,'' ''criminal history records repository,'' ''Federal Service Coordinator,'' ''Fingerprint Identification Records System'' (FIRS), ''Interstate Identification Index System'' (III System), ''National Crime Information Center'' (NCIC), ''National Fingerprint File'' (NFF), and ''National Identification Index'' (NII); the definition of ''Department of Justice criminal history record information system'' is being eliminated; and the definitions are being placed in alphabetical order. In addition to the foregoing changes, the Department of Justice is currently reviewing additional changes to these regulations to be promulgated in future rulemaking. We note that 28 CFR part 20, subpart B, which also contains dated nomenclature and addresses, would not be directly changed by this proposed rule. The Department of Justice may consider possible changes to 28 CFR part 20, subpart B at some later time.

Applicable Administrative Procedures and Executive Orders; Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Most of the matters addressed by this proposed rule relate to nomenclature changes and to intra- and intergovernmental authorities not involving the private sector, or to governmental interaction with individuals in non-business contexts. The one change that relates to the private sector provides expanded authority for the dissemination of criminal justice information to private entities with whom authorized governmental agencies have contracted for criminal justice support services. Far from having any adverse effect on small entities, this change will, if anything, result in expanded opportunities for the private sector to conduct business with criminal justice agencies.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section (1)(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is not a significant regulatory action under Executive Order 12866, section 3(f) and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

In view of the FBI's desire to provide this increased flexibility to the states as soon as possible, a thirty day comment period is considered appropriate.

Executive Order 12612

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

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Paperwork Reduction Act of 1995

This proposed rule does not contain collection of information requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is not required.

Executive Order 12988: Civil Justice Reform

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

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Governmental agencies), Whistleblowing.

28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

28 CFR Part 50

Administrative practice and procedure.

Accordingly, Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.85 [Amended]

2. Amend § 0.85 as follows:

a. Remove the two references in paragraph (b) to ''fingerprint cards'' and add in their place the term ''fingerprints'';

b. Revise paragraph (j) to read as follows:

§ 0.85 General functions.

* * * * *

(j) Exercise the power and authority vested in the Attorney General to approve and conduct the exchanges of identification records enumerated at § 50.12(a) of this chapter.

* * * * *

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

3. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

4. Section 16.30 is revised to read as follows:

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation (FBI) concerning procedures to be followed when the subject of an identification record requests production of that record to review it or to obtain a change, correction, or updating of that record.

5. Section 16.31 is revised to read as follows:

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a ''rap sheet,'' is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprints submitted in connection with federal employment, naturalization, or military service. The identification record includes the name of the agency or institution that submitted the fingerprints to the FBI. If the fingerprints concern a criminal offense, the identification record includes the date of arrest or the date the individual was received by the agency submitting the fingerprints, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint submissions, disposition reports, and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Criminal Justice Information Services Division is not the source of the arrest data reflected on an identification record.

6. Section 16.32 is amended by revising the first sentence to read as follows:

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306.

* * *

7. Section 16.33 is amended by adding a sentence at the end of this section to read as follows:

§ 16.33 Fee for production of identification record.

* * * Subject to applicable laws, regulations, and directions of the Attorney General of the United States, the Director of the FBI may from time to time determine and establish a revised fee amount to be assessed under this authority. Notice relating to revised fee amounts shall be published in the **Federal Register**.

§ 16.34 [Amended]

8. Section 16.34 is amended as follows:

a. Remove the reference to the former address, from ''Assistant Director'' through zip code ''20537–9700,'' and add in its place the following new address: ''FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306'';

b. Remove the remaining reference to ''FBI Identification Division'' and add in its place ''FBI CJIS Division.''

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

9. The authority citation for part 20 continues to read as follows:

Authority: 28 U.S.C. 534; Public Law 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*, Public Law 99–169, 99 Stat. 1002, 1008–1011, as amended by Public Law 99–569, 100 Stat. 3190, 3196.

10–11. Section 20.1 is revised to read as follows:

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.

12. Section 20.3 is revised to read as follows:

§ 20.3 Definitions.

As used in these regulations:

(a) *Act* means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, *et seq.*, as amended.

(b) *Administration of criminal justice* means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(c) *Control Terminal Agency* means a duly authorized state, foreign, or international criminal justice agency with direct access to the National Crime Information Center telecommunications network providing statewide (or equivalent) service to its criminal justice users with respect to the various

systems managed by the FBI CJIS Division.

(d) *Criminal history record information* means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.

(e) *Criminal history record information system* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

(f) *Criminal history record repository* means the state agency designated by the governor or other appropriate executive official or the legislature to perform centralized recordkeeping functions for criminal history records and services in the state.

(g) *Criminal justice agency* means:

(1) Courts; and

(2) A governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included.

(h) *Direct access* means having the authority to access systems managed by the FBI CJIS Division, whether by manual or automated methods, not requiring the assistance of or intervention by any other party or agency.

(i) *Disposition* means information disclosing that criminal proceedings have been concluded and the nature of the termination, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings; or disclosing that proceedings have been indefinitely postponed and the reason for such postponement. Dispositions shall include, but shall not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(j) *Executive order* means an order of the President of the United States or the Chief Executive of a state that has the force of law and that is published in a manner permitting regular public access.

(k) *Federal Service Coordinator* means a non-Control Terminal Agency that has a direct telecommunications line to the National Crime Information Center network.

(l) *Fingerprint Identification Records System* or ''FIRS'' means the following FBI records: criminal fingerprints and/or related criminal justice information submitted by authorized agencies having criminal justice responsibilities; civil fingerprints submitted by federal agencies and civil fingerprints submitted by persons desiring to have their fingerprints placed on record for personal identification purposes; identification records, sometimes referred to as ''rap sheets,'' which are compilations of criminal history record information pertaining to individuals who have criminal fingerprints maintained in the FIRS; and a name index pertaining to all individuals whose fingerprints are maintained in the FIRS. See the FIRS Privacy Act System Notice periodically published in the **Federal Register** for further details.

(m) *Interstate Identification Index System* or ''III System'' means the cooperative federal-state system for the exchange of criminal history records, and includes the National Identification Index, the National Fingerprint File, and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(n) *National Crime Information Center* or ''NCIC'' means the computerized information system, which includes telecommunications lines and any message switching facilities that are authorized by law, regulation, or policy approved by the Attorney General of the United States to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. The NCIC includes, but is not limited to, information in the III System. See the NCIC Privacy Act System Notice periodically published in the **Federal Register** for further details.

(o) *National Fingerprint File* or ''NFF'' means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(p) *National Identification Index* or ''NII'' means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(q) *Nonconviction data* means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; information disclosing that the police have elected not to refer a matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed; and information that there has been an acquittal or a dismissal.

(r) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(s) *Statute* means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

13. Subpart C is revised to read as follows:

Subpart C—Federal Systems and Exchange of Criminal History Record Information

20.30 Applicability.
20.31 Responsibilities.
20.32 Includable offenses.
20.33 Dissemination of criminal history record information.
20.34 Individual's right to access criminal history record information.
20.35 Criminal Justice Information Services Advisory Policy Board.
20.36 Participation in the Interstate Identification Index System.
20.37 Responsibility for accuracy, completeness, currency, and integrity.
20.38 Sanction for noncompliance.

Subpart C—Federal Systems and Exchange of Criminal History Record Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to the III System and the FIRS, and to duly authorized local, state, tribal, federal, foreign, and international criminal justice agencies

to the extent that they utilize the services of the III System or the FIRS. This subpart is applicable to both manual and automated criminal history records.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall manage the NCIC.

(b) The FBI shall manage the FIRS to support identification and criminal history record information functions for local, state, tribal, and federal criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by federal statute, state statute pursuant to Public Law 92–544, 86 Stat. 1115, Presidential executive order, or regulation or order of the Attorney General of the United States.

(c) The FBI CJIS Division may manage or utilize additional telecommunication facilities for the exchange of fingerprints, criminal history record related information, and other criminal justice information.

(d) The FBI CJIS Division shall maintain the master fingerprint files on all offenders included in the III System and the FIRS for the purposes of determining first offender status; to identify those offenders who are unknown in states where they become criminally active but are known in other states through prior criminal history records; and to provide identification assistance in disasters and for other humanitarian purposes.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in the III System and the FIRS shall include serious and/or significant adult and juvenile offenses.

(b) The FIRS excludes arrests and court actions concerning nonserious offenses, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run), when unaccompanied by a § 20.32(a) offense. These exclusions may not be applicable to criminal history records maintained in state criminal history record repositories, including those states participating in the NFF.

(c) The exclusions enumerated above shall not apply to federal manual criminal history record information collected, maintained, and compiled by the FBI prior to the effective date of this subpart.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies;

(2) To federal agencies authorized to receive it pursuant to federal statute or Executive order;

(3) For use in connection with licensing or employment, pursuant to Public Law 92–544, 86 Stat. 1115, or other federal legislation, and for other uses for which dissemination is authorized by federal law. Refer to § 50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph;

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses;

(5) To criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS);

(6) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and

(7) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments, related agencies, or service providers identified in paragraphs (a)(6) and (a)(7).

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

(d) Criminal history records received from the III System or the FIRS shall be used only for the purpose requested and a current record should be requested when needed for a subsequent authorized use.

§ 20.34 Individual's right to access criminal history record information.

The procedures by which an individual may obtain a copy of his or her identification record from the FBI to review and request any change, correction, or update are set forth in §§ 16.30–16.34 of this chapter. The procedures by which an individual may obtain a copy of his or her identification record from a state or local criminal justice agency are set forth in section 20.34 of the appendix to this part.

§ 20.35 Criminal Justice Information Services Advisory Policy Board.

(a) There is established a CJIS Advisory Policy Board, the purpose of which is to recommend to the FBI Director general policy with respect to the philosophy, concept, and operational principles of various criminal justice information systems managed by the FBI's CJIS Division.

(b) The Board includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations.

(c) All members of the Board will be appointed by the FBI Director.

(d) The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Title 5, United States Code, Appendix 2.

§ 20.36 Participation in the Interstate Identification Index System.

(a) In order to acquire and retain direct access to the III System, each Control Terminal Agency and Federal Service Coordinator shall execute a CJIS User Agreement (or its functional equivalent) with the Assistant Director in Charge of the CJIS Division, FBI, to abide by all present rules, policies, and procedures of the NCIC, as well as any rules, policies, and procedures hereinafter recommended by the CJIS

Advisory Policy Board and adopted by the FBI Director.

(b) Entry or updating of criminal history record information in the III System will be accepted only from state or federal agencies authorized by the FBI. Terminal devices in other agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency, and integrity.

It shall be the responsibility of each criminal justice agency contributing data to the III System and the FIRS to assure that information on individuals is kept complete, accurate, and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

Access to systems managed or maintained by the FBI is subject to cancellation in regard to any agency or entity that fails to comply with the provisions of subpart C.

14. The appendix to part 20 is amended by revising the commentary for subparts A and C to read as follows:

Appendix to Part 20—Commentary on Selected Sections of the Regulations on Criminal History Record Information Systems

Subpart A–§ 20.3(d). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/III System (OBTS/III) data elements. If notations of an arrest, disposition, or other formal criminal justice transaction occurs in records other than the traditional ''rap sheet,'' such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, and ownership of property and vehicles) is not included in the definition of criminal history information.

§ 20.3(g). The definitions of criminal justice agency and administration of criminal justice in § 20.3(b) of this part must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies, as well as subunits of noncriminal justice agencies that perform the administration of criminal justice pursuant to a federal or state statute or executive order and allocate a substantial portion of their budgets to the administration of criminal justice. The above subunits of noncriminal justice agencies would include, for example, the Office of Investigation of the Food and Drug Administration, which has as its principal function the detection and apprehension of persons violating criminal provisions of the Federal Food, Drug and Cosmetic Act. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services, such as New York's Division of Criminal Justice Services.

§ 20.3(i). Disposition is a key concept in section 524(b) of the Act and in §§ 20.21(a)(1) and 20.21(b) of this part. It therefore is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other, unspecified transactions concluding criminal proceedings within a particular agency.

§ 20.3(q). The different kinds of acquittals and dismissals delineated in § 20.3(i) are all considered examples of nonconviction data.

* * * * *

Subpart C—§ 20.31. This section defines the criminal history record information system managed by the Federal Bureau of Investigation. Each state having a record in the III System must have fingerprints on file in the FBI CJIS Division to support the III System record concerning the individual.

Paragraph (b) is not intended to limit the identification services presently performed by the FBI for local, state, tribal, and federal agencies.

§ 20.32. The grandfather clause contained in paragraph (c) of this section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses that were stored prior to February, 1973. In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will also appear in the arrest segment of the III System record.

§ 20.33(a)(3). This paragraph incorporates provisions cited in 28 CFR 50.12 regarding dissemination of identification records outside the federal government for noncriminal justice purposes.

§ 20.33(a)(6). Noncriminal justice governmental agencies are sometimes tasked to perform criminal justice dispatching functions or data processing/information services for criminal justice agencies as part, albeit not a principal part, of their responsibilities. Although such inter-governmental delegated tasks involve the administration of criminal justice, performance of those tasks does not convert an otherwise non-criminal justice agency to a criminal justice agency. This regulation authorizes this type of delegation if it is effected pursuant to executive order, statute, regulation, or inter-agency agreement. In this context, the noncriminal justice agency is servicing the criminal justice agency by performing an administration of criminal justice function and is permitted access to criminal history record information to accomplish that limited function. An example of such delegation would be the Pennsylvania Department of Administration's Bureau of Consolidated Computer Services, which performs data processing for several state agencies, including the Pennsylvania State Police. Privatization of the data processing/information services or dispatching function by the noncriminal justice governmental agency can be accomplished pursuant to § 20.33(a)(7) of this part.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are set forth in 28 CFR 16.30–16.34.

The procedures by which an individual may obtain a copy of his III System record are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the III System, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and federal administrative and statutory regulations. Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of the record through a law enforcement agency which has access to the III System. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry through NCIC to obtain his III System record or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Clarksburg, West Virginia, by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the state's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the III System.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in subpart B in order to allow for processing time that may be needed by the states before forwarding the disposition to the FBI.

PART 50—STATEMENTS OF POLICY

15. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1921 *et seq.*, 1973c.

16. Section 50.12 is revised to read as follows:

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Public Law 92–544, 86 Stat. 1115. Also, pursuant to 15 U.S.C. 78q, 7 U.S.C. 21(b)(4)(E), and 42 U.S.C. 2169, respectively, such records can be exchanged with certain segments of the securities industry, with registered futures associations, and with nuclear power plants. The records also may be exchanged in other instances as authorized by federal law.

(b) The FBI Director is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records. Under this authority, effective September 6, 1990, the FBI Criminal Justice Information Services (CJIS) Division has made all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

Dated: April 29, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–11344 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–016]

RIN 2115–AE46

Special Local Regulations for Marine Events; Night in Venice, Great Egg Harbor, City of Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations established for the Night in Venice, a marine event held annually in Great Egg Harbor, by redefining the regulated area. This action is necessary to provide a current description of the event area. This action is intended to enhance the safety of life and property during the event.

DATES: Comments must reach the Coast Guard on or before July 9, 1999.

ADDRESSES: You may mail comments to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or hand-deliver to Room 119 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204. Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection and copying at the above address between 9:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05–99–016) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations at 33 CFR 100.54 establish special local regulations for the Night in Venice, a marine event held annually in Great Egg Harbor Bay. The purpose of these regulations is to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels. The regulated area was initially described in the current regulations by referencing prominent aids to navigation in the event area. Since the initial publication of the regulations at 33 CFR 100.504, the referenced buoys and markers have been renamed and/or repositioned.

Discussion of Proposed Rule

The Coast Guard proposes to amend the special local regulations previously established for this event by redefining the regulated area, using current aids to navigation and prominent landmarks. The general shape and overall size of the regulated area will remain the same.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal merely redefines the regulated area of an existing regulation and does not impose any new restrictions on vessel traffic.

Small Entities

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

Because this proposal merely redefines the regulated area of an existing regulation and does not impose any new restrictions on vessel traffic, the Coast Guard expects the impact of this proposal to be minimal.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this proposal on State, local and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1531) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

Collection of Information

This proposal does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this proposal 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.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 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 and 33 CFR 100.35.

2. Section 100.504 is amended by revising paragraph (a) to read as follows:

§ 100.504 Night in Venice, Great Egg Harbor Bay, City of Ocean City, NJ.

(a) *Regulated area.* The waters of Great Egg Harbor Bay and Beach Thorofare from Intracoastal Waterway Light 275 (LLNR 36045) northward along the entire width of the Intracoastal Waterway to the 9th Street Bridge, thence northeastward along the Ocean City Waterfront to the Long Port-Ocean City Bridge, thence northward along the Long Port-Ocean City Bridge to the northern shore, thence westward to Ships Channel Buoy 6 (LLNR 1350), thence southward to Intracoastal Waterway Light 252 (LLNR 35980), thence southwestward to the 9th Street Bridge.

* * * * *

Dated: April 16, 1999.

Roger T. Rufe, Jr.,

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

[FR Doc. 99–11683 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–99–019]

RIN 2115–AE46

Special Local Regulations; Charleston Harbor Grand Prix, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations in the coastal waters off Isle of Palms, SC, for the Charleston Harbor Grand Prix, sponsored by Charleston Harbor Maritime Associates, LLC. The two day race will occur on August 14 and 15, 1999, between the hours of 12 p.m. and 3 p.m. each day, Eastern Daylight time (EDT) offshore Isle of Palms. The regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the same address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (843) 724–7628.

FOR FURTHER INFORMATION CONTACT: LTJG S.S. Brisco, (843) 724–7628, Project Manager, Coast Guard Group Charleston, SC.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (GGD07–99–019) and the specific section of this proposal to which each

comment applies, and give a reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public hearing at the time and place announced by a notice in the **Federal Register**.

Background and Purpose

The proposed regulations are needed to provide for the safety of life during the Charleston Harbor Grand Prix. These proposed regulations are intended to promote safe navigation offshore Isle of Palms immediately before, during, and after the races by controlling the traffic entering, exiting, and transiting within the regulated area. The anticipated concentration of spectator vessels and participating vessels associated with the race poses a safety concern, which is addressed in these proposed special local regulations.

The proposed regulations will encompass an area north of the Charleston Harbor entrance lighted buoy 7 (LLNR 2405) with four (4) conspicuous markers indicating the corners of the regulated area. These proposed regulations would prohibit the entry or movement of spectator vessels and other non-participating vessel traffic within the regulated area on August 14 and 15, 1999, between 11 a.m. and 4 p.m. each day or at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal 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 the order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation will only be in effect for five (5) hours each day in a limited area off Charleston Harbor.

Small Entities

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

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant effect upon a substantial number of small entities because this regulation will only be in effect in a limited area off Charleston Harbor for five (5) hours on two separate days.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

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

Federalism

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

Environmental Assessment

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways. Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

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

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

2. Add § 100.35T–07–019 to read as follows:

§ 100.35T–07–019; Charleston Harbor Grand Prix; Charleston, SC.

(a) *Definitions:*

(1) *Regulated area.* The regulated area includes all waters in the Atlantic Ocean north of Charleston Harbor entrance lighted buoy 7 (LLNR 2405) bounded by the following 4 points:

(i) 32°48′538″N, 079°43′352″W;

(ii) 32°47′279″N, 079°42′390″W;

(iii) 32°45′156″N, 079°47′740″W;

(iv) 32°46′608″N, 079°48′146″W; All coordinates reference Datum NAD: 83. Four (4) conspicuous markers will indicate the corners of the regulated area.

(2) *Spectator area.* Spectators vessels are required to remain seaward of a line drawn from 32°45′181″N, 079°46′765″W to 32°46′557″N, 079°43′420″W.

(3) *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 Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.* (1) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard Patrol Commander may delay, modify, or cancel the race as conditions or circumstances require.

(3) Spectator and other non-participating vessels may watch the participants on the seaward side of the racecourse maintaining a minimum distance of 500 yards behind the markers. Upon the completion of the last race all vessels may resume normal operations.

(c) *Dates.* These regulations become effectice at 11 a.m. and terminate at 4 p.m. EDT each day on August 14 and 15, 1999.

Dated: April 29, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 99–11687 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–030]

RIN 2121–AA98

Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on western Long Island Sound for the Koechlin Wedding Fireworks Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of western Long Island Sound.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–030), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–030) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a Fireworks display in western Long Island Sound. This proposed regulation establishes a temporary safety zone in all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°56′33″N 073°41′25″W (NAD 1983), approximately 400 yards east of Milton Point, Rye, New York. The proposed safety zone is effective from 8:30 p.m. until 10 p.m. on Saturday July 24, 1999. There is no rain date for this event. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. There is also insufficient time to publish a Temporary final rule 30 days before the event and provide a 60 day comment period.

Discussion of Proposed Rule

The proposed safety zone is for the Koechlin Wedding Fireworks held in western Long Island Sound, New York. This event will be held on Saturday, July 24, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of western Long Island Sound during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels may safely transit to the east of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

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

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (See **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposes rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 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, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–030, to read as follows:

§ 165.T01–030 Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, New York

(a) *Location.* The following area is a safety zone: All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°56′33″ N 073°41′25″ W (NAD 1983), approximately 400 yards East of Milton Point, Rye, New York.

(b) *Effective period.* This section is effective on Saturday, July 24, 1999, from 8:30 p.m. until 10 p.m. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the port or the designated on scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11690 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–041]

RIN 2121–AA98

Safety Zone: Hastings-on-Hudson Fireworks, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the Hudson River for the Hastings-on-Hudson Fireworks Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–041), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–041) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments

should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Fireworks by Grucci has submitted an Application for Approval of a Marine Event for a fireworks display in the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″N 073°53′25″W (NAD 1983), approximately 335 yards west of Hastings-on-Hudson, New York, and approximately 500 yards west of City Hall. The proposed safety zone is effective from 8:30 p.m. until 10 p.m. on July 3, 1999. If the event is cancelled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on July 5, 1999. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 750 yards of the 1,350-yard wide river. The Captain of the Port does not anticipate any negative impact on the vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. There is also insufficient time to publish a Temporary final rule 30 days before the event and provide a 60 day comment period.

Discussion of Proposed Rule

The proposed safety zone is for the Hastings-on-Hudson Fireworks display held in the Hudson River, New York. This event will be held on Saturday, July 3, 1999. If the event is cancelled due to inclement weather, then the event will be held on July 5, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Hudson River during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels may safely transit to the west of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

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

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (**ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a

mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 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, 160.5; 49 CFR 1.46. Section 165, 100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–041 to read as follows:

§ 165.T01–041 Safety Zone: Hastings-on-Hudson Fireworks, Hudson River, New York.

(a) *Location.* The following area is a safety zone: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″N 073°53′25″W (NAD 1983), approximately 335 yards west of Hastings-on-Hudson, New York and approximately 500 yards west of City Hall.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on July 3, 1999. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on July 5, 1999.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11689 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–037]

RIN 2121–AA98

Safety Zone: PricewaterhouseCooper LLP Fireworks, Hudson River, Manhattan, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Hudson River for the PricewaterhouseCooper Fireworks Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–037), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–037) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a Fireworks display on the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. The proposed safety zone would be effective on Friday, June 25, 1999, from 8:30 p.m. until 10 p.m. There is no rain date for this event. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for one and a half hour long local event and should have negligible impact on vessel transits. There is also insufficient time to publish a Temporary final rule 30 days before the event and provide a 60 day comment period.

Discussion of Proposed Rule

The proposed safety zone is for the PricewaterhouseCooper LLP Fireworks

held on the Hudson River at Pier 60, Chelsea Piers, Manhattan, New York. This event will be held on Friday, June 25, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not bee reviewed 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, Piers 59—62 and the Piers at Castle Point, New Jersey, that vessels may safely transit to the east of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts.

Small Entities

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

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

Tile II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions of State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written Categorical exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 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, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–037 to read as follows:

§ 165.T01–037 Safety Zone: PricewaterhouseCooper LLP Fireworks, Hudson River, Manhattan, New York

(a) *Location.* The following area is a safety zone: All waters of the Hudson River within a 360-year radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective period.* This section is effective on Friday, June 25, 1999, from 8:30 p.m. until 10 p.m. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other

means, the operator of a vessel shall proceed as directed.

Dated: April 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11688 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–042]

RIN 2121–AA98

Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on Hempstead Harbor for the Glen Cove, NY fireworks display. this action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Hempstead Harbor.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–042), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–042) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a fireworks display on Hempstead Harbor. This proposed regulation establishes a temporary safety zone in all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″N 073°39′34″W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The proposed safety zone is effective from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is cancelled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on July 5, 1999. The proposed safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 1,075 yards of Hempstead Harbor. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Additionally, vessels are not precluded from mooring at or getting underway from public or private facilities at Glen Cove or Red Spring Point, NY in the vicinity of this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. The Coast Guard expects to receive no comments on this NRPM due to the limited duration of the event and the fact that it should not interfere with vessel transits.

Discussion of Proposed Rule

The proposed safety zone is for the Glen Cove, NY fireworks display held on Hempstead Harbor, New York. This event will be held on Sunday, July 4, 1999. If the event is cancelled due to inclement weather, then the event will be held on July 5, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of Hempstead Harbor, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at public or private facilities in Glen Cove or Red Spring Point, NY in the vicinity of this event, that vessels may safely transit to the west of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

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

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 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, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–042 to read as follows:

§ 165.T01–042 Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, New York.

(a) *Location*. The following area is a safety zone: All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″N 073°39′34″W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR) 27065).

(b) *Effective period*. This section is effective from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is canceled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on July 5, 1999.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 23, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11684 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0135 EC; FRL–6336–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision—South Coast Air Quality Management District; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published March 18, 1999 (64 FR 13375). On March 18, 1999, EPA proposed a limited approval and limited disapproval of revisions to the California State Implementation Plan controlling oxides of nitrogen emissions in the South Coast Air Quality Management District. This rule concerned South Coast Air Quality Management District Rule 1134.

At the request of the South Coast Air Quality Management District, EPA is reopening the comment period.

DATES: Comments must be received on or before May 19, 1999.

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

FOR FURTHER INFORMATION CONTACT: Ed Addison U.S. EPA Region IX, at (415) 744–1160.

Dated: April 21, 1999.

Laura Yoshii,

Deputy, Regional Administrator, Region IX.

[FR Doc. 99–11707 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI90–01–7321; FRL–6339–3]

Approval and Promulgation of Maintenance Plan Revisions; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: We propose approval of a February 22, 1999, request from Wisconsin for State Implementation Plan (SIP) revisions to the ozone maintenance plans for Kewaunee, Sheboygan and Walworth Counties. The revisions would remove the contingency measures from the contingency plan portion of the maintenance plans.

DATES: Written comments on this proposal must be received on or before June 9, 1999.

ADDRESSES: Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

What action Is USEPA taking?
What is the background?
What information did the State submit?
Why is the request approvable?

What Action Is USEPA Taking?

We propose approval of revisions to the ozone maintenance plans for Kewaunee, Sheboygan and Walworth Counties, Wisconsin. The revisions remove the contingency measures from the contingency plan portion of the ozone maintenance plans.

What Is the Background?

USEPA designated Kewaunee, Sheboygan and Walworth Counties as nonattainment for the one-hour ozone National Ambient Air Quality Standard (NAAQS) in 1991. Since then, these Counties attained the one-hour ozone standard and USEPA redesignated them to attainment on August 26, 1996 (61 FR 43668). As part of the redesignation, Wisconsin submitted maintenance plans which USEPA approved into the SIP. The purpose of the maintenance plans is to ensure maintenance of the one-hour ozone NAAQS through the 10 year maintenance period. The maintenance plan contains contingency measures. Contingency provisions should identify and correct any violation of the one-hour ozone NAAQS in a timely fashion. Triggers are included in the contingency provisions. These triggers identify the need to implement contingency measures to correct an air quality problem. Triggering events may be linked to ozone air quality and/or an emission level of ozone precursors. The contingency measures would be implemented to correct a violation of the one-hour ozone standard.

We approved the maintenance plans for Kewaunee, Sheboygan and Walworth Counties on August 26, 1996 (61 FR 43668).

What Information Did the State Submit?

On February 22, 1999, Wisconsin submitted a request to revise the Kewaunee, Sheboygan and Walworth County ozone maintenance plans. Specifically, the State requested removal of the following contingency measures from the Kewaunee and Sheboygan County maintenance plans:

(1) Lower the major source threshold for industrial sources, and

(2) Implement gasoline standards to lower volatile organic compound emissions.

For Walworth County, the State requested removal of the following contingency measures from the maintenance plan:

(1) Implement Stage II vapor recovery, and

(2) Impose non-control technology guideline reasonably available control technology limits on industrial sources.

The State held a public hearing on October 27, 1998 in Milwaukee. The State did not receive public comments on the proposed revision.

Why Is the Request Approvable?

We promulgated a new National Ambient Air Quality Standard (NAAQS) for ozone on July 18, 1998. The new ozone NAAQS is 0.08 parts per million (ppm), averaged over 8 hours, which replaced the 0.12 ppm, 1-hour NAAQS.

On July 16, 1997, President Clinton issued a directive to Administrator Browner (62 FR 38421). The directive describes a plan to implement the eight-hour ozone and fine particulate matter standards and continue to implement the one-hour standard. A December 29, 1997, memorandum entitled ''Guidance for Implementing the 1-Hour and Pre-Existing PM10 NAAQS'' reflected the President's directive. This document provides guidance for the transition from the one-hour to the eight-hour standard.

The guidance document explains that maintenance plans remain in effect for areas where the one-hour standard is revoked. However, those maintenance plans may be revised to withdraw untriggered or unimplemented contingency measure provisions linked to the one-hour ozone standard.

USEPA revoked the one-hour ozone standard in Kewaunee, Sheboygan and Kewaunee Counties based on 1994–1996 quality assured air monitoring data on June 5, 1998 (63 FR 31014). The contingency measures proposed for removal have neither been triggered nor implemented.

We deemed Wisconsin's SIP revision request complete on March 5, 1999.

USEPA Proposed Action

After review of the SIP revision request, we find that the requested removal of the contingency measures from the maintenance plans of Kewaunee, Sheboygan, and Walworth Counties is approvable because the 1-hour standard is no longer applicable in the area as a result of revocation of the standard and these contingency measures are untriggered and unimplemented. This request meets our guidance and policies. Written comments must be received by USEPA on or by June 9, 1999.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Enhancing Intergovernmental Partnerships. Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Consultation and Coordination With Indian Tribal Governments. Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

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

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

E. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) of the Clean Air Act (Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action of the revisions to the ozone maintenance plans for these counties promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VI. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Implementation plans.

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

Dated: April 21, 1999.

William E. Muno,

Acting Regional Administrator, Region 5.

[FR Doc. 99–11711 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6338–4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is

intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add one new site to the Federal Facilities section of the NPL. The site is the Alameda Naval Air Station site located in Alameda, California.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before July 9, 1999.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund

section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on January 19, 1999 (64 FR 2942).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as

explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of April 26, 1999, the Agency has deleted 184 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of April 26, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 184 sites that have been deleted from the NPL, 175 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 424 sites also on the NPL CCL. Thus, as of February 3, 1999, the CCL consists of 599 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the Alameda Naval Air Station site in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 9 office in San Francisco, CA.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Region 9 docket after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Region 9 docket for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Region 9 docket is as follows: Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2343.

You may also request copies from EPA Headquarters or the Region 9 docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional 9 Docket?

The Region 9 docket for this rule contains all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the Alameda Naval Air Station site. These reference documents are available only in the Region 9 docket.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal

comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Addition to the NPL

With today's proposed rule, EPA is proposing to add one site to the Federal Facilities section; the Alameda Naval Air Station site in Alameda, California. The site is being proposed based on an HRS score of 28.50 or above.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 10 sites to the NPL; resulting in an NPL of 1,212 sites (1,056 in the General Superfund section and 156 in the Federal Facilities section). With this proposal of one new site, there are now 63 sites proposed and awaiting final agency action, 56 in the General Superfund section and 7 in the Federal Facilities section. (Please note there was a separate proposed rule published recently on April 23, 1999 (64 FR 19968) that proposes to add 12 new sites to the NPL along with a reproposal of one site.) Final and proposed sites now total 1,275.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA

cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply To This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply To This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply To 3501 This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR Part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Proposed Rule?

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

This proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of Executive Order 12875 do not apply to this rule.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

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

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: April 30, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–11706 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–133, RM–9523]

Radio Broadcasting Services; Evergreen, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 230A at Evergreen, Montana, as the community's first local broadcast service. The channel can be allotted to Evergreen without a site restriction at coordinates 48–33–33 NL and 114–16–32 WL. Canadian concurrence will be requested for the allotment of Channel 230A at Evergreen.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–133, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–11641 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–134, RM–9543 and RM–9572]

Radio Broadcasting Services; Victor, MT or Drummond, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive petitions for rule making proposing a first local service at Victor or Drummond, Montana. The first is filed by Mountain West Broadcasting proposing the allotment of Channel 269C3 at Victor, Montana (RM–9543). The channel can be allotted to Victor without a site restriction at coordinates 46–25–00 NL and 114–08–57 WL. The second is filed by Battani Corporation requesting the allotment of Channel 268C at Drummond, Montana (RM–9572). The channel can be allotted to Drummond with a site restriction 51.8 kilometers (32.2 miles) southwest of the community. The coordinates for Channel 268C at Drummond are 46–16–47 and 113–31–05. Canadian concurrence will be requested for the allotment of Channel 269C3 at Victor and Channel 268C at Drummond.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 and Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–134, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–11642 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–135, RM–9522]

Radio Broadcasting Services; Groveton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Trinity County Radio proposing the allotment of Channel 251A at Groveton, Texas, as the community's first local service. The channel can be allotted to Groveton without a site restriction at coordinates 31–03–30 NL and 95–07–36 WL.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Ann Bavender, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–135, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–11643 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–136, RM–9570]

Radio Broadcasting Services; Babb, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 233C3 at Babb, Montana, as the community's first local service. The channel can be allotted to Babb with a site restriction 12 kilometers (7.4 miles) southwest of the community at coordinates 48–45–34 NL and 113–31–17 WL. Canadian concurrence will be requested for the allotment of Channel 233C3 at Babb.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–136, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–11644 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–137, RM–9571]

Radio Broadcasting Services; Amazonia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 273A at Amazonia, Missouri, as the community's first local service. The channel can be allotted to Amazonia with a site restriction 6.7 kilometers (4.1 miles) northeast of the community at coordinates 39–56–34 NL and 94–51–22 WL.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–137, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–11645 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–138, RM–9569]

Radio Broadcasting Services; Lovelady, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lovelady Broadcasting Company proposing the allotment of Channel 282C3 at Lovelady, Texas, as the community's first local broadcast service. The channel can be allotted to Lovelady with a site restriction 4.1 kilometers (2.5 miles) north of the community at coordinates 31–09–51 NL and 95–27–09 WL.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann Bavender, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, VA 22209.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–138, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–11646 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 990429112–9112–01; I.D. 040899A]

RIN 0648–AM58

Designated Critical Habitat: Proposed Critical Habitat for the Oregon Coast Coho Salmon Evolutionarily Significant Unit

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

ACTION: Proposed rule; request for comments; and notification of public hearings.

SUMMARY: NMFS proposes to designate critical habitat for the Oregon Coast Coho Salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU) previously listed as a threatened species under the Endangered Species Act (ESA). Proposed critical habitat occurs in Oregon coastal river basins between Cape Blanco and the Columbia River. The areas described in this proposed rule represent the current freshwater and estuarine range inhabited by the ESU. Freshwater critical habitat includes all waterways and substrates below longstanding, naturally impassable barriers (i.e., natural

waterfalls in existence for at least several hundred years) and several dams that block access to former coho salmon habitats. The economic and other impacts resulting from this critical habitat designation are expected to be minimal.

DATES: Written comments on the proposed Oregon Coast coho salmon critical habitat designation must be received by July 9, 1999. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings. Requests for specific locations or additional public hearings must be received by June 24, 1999.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of public hearings. Written comments on this proposed rule or requests for additional public hearings or reference materials should be sent to Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737; telefax (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005, or Chris Mobley, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

The history of petitions received regarding coho salmon is summarized in the proposed rule published on July 25, 1995 (60 FR 38011). The most comprehensive petition was submitted by the Pacific Rivers Council and by 22 co-petitioners on October 20, 1993. In response to that petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological and Technical Committees (PSBTCs) in Washington, Oregon, and California. The PSBTCs consisted of scientists from Federal, state, and local resource agencies, Indian tribes, universities, industries, professional societies, and public interest groups with technical expertise relevant to coho salmon. NMFS also established a Biological Review Team (BRT), composed of staff from its Northwest Fisheries Science Center and Southwest Regional Office, which conducted a coastwide status review for coho salmon (Weitkamp *et al.*, 1995; NMFS, 1997).

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (60 FR 38011, July 25, 1995) that identified six ESUs of coho salmon, ranging from southern British Columbia to central California. The Oregon Coast ESU, Southern Oregon/Northern California Coasts ESU, and Central California Coast ESU were proposed for listing as threatened species, and the Olympic Peninsula ESU was found not to warrant listing. The Puget Sound/Strait of Georgia ESU and the lower Columbia River/southwest Washington Coast ESU were identified as candidates for listing. NMFS is in the process of completing status reviews for the latter two ESUs; results and findings for both will be announced in an upcoming **Federal Register** document.

On August 10, 1998, NMFS issued a final rule listing the Oregon coast coho salmon ESU as a threatened species (63 FR 42587). Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. At the time of the final listing, NMFS found that critical habitat was not determinable for this ESU. However, NMFS has compiled and reviewed the relevant information and now determines that sufficient information exists to propose designating critical habitat for the Oregon Coast ESU. NMFS will consider all available information and data in finalizing this proposal.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.'' The term ''conservation,'' as defined in section 3(3) of the ESA, means '' * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.''

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (50 CFR 424.12(b)).

Use of the term ''essential habitat'' within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Consideration of Economic and Other Factors

The economic and other impacts of a critical habitat designation have been considered and evaluated in this proposed rulemaking. NMFS identified present and anticipated activities that may adversely modify the area(s) being considered or that may be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (see 16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts resulting specifically from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases, the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal. In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the ''take'' prohibitions contained in section 9 of the ESA and associated regulations. ''Take,'' as defined in the ESA means ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly

impairs essential behaviors, including breeding, feeding, rearing or migration (63 FR 24148, May 1, 1998).

Significance of Designating Critical Habitat

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the ESA section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that ''appreciably diminish the value of critical habitat for both the survival and recovery'' of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that ''reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species'' (50 CFR 402.02). Using these definitions, activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' current range have been designated. Federal agencies are required to consult with NMFS under section 7 (50 CFR 402.14(a)), when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides Federal agencies with a clear indication as to when consultation under section 7 of the ESA is required, particularly in cases where the proposed action would not result in immediate mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when a migratory species is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 (i.e., activities outside critical habitat that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in an agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations that restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time regulations are proposed and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local authorities, such as zoning or wetlands and riparian lands protection, may also benefit critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as ''critical habitat'' are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation is promulgated after considering all comments and any new information received on the proposal. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the essential habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections.

Critical Habitat of the Oregon Coast Coho Salmon ESU

The Oregon Coast ESU is identified as all naturally spawned populations of coho salmon in coastal streams south of the Columbia River and north of Cape Blanco (60 FR 38011, July 25, 1995). Biological information for Oregon Coast coho salmon can be found in species status assessments by NMFS (Weitkamp *et al.*, 1995; NMFS, 1997) and by the Oregon Department of Fish and Wildlife (ODFW) (Nickelson *et al.*, 1992; Kostow, 1995; and Oregon Coastal Salmon Restoration Initiative (OCSRI), 1997), and in species life history summaries by Laufle *et al.*, 1986, Emmett *et al.*, 1991, and Sandercock, 1991 and in the proposed rule **Federal Register** document (60 FR 38011, July 25, 1995).

More than one million coho salmon are believed to have returned to Oregon coastal rivers in the early 1900s (Lichatowich, 1989), the bulk of them originating in this ESU. Current production is estimated to be less than 10 percent of historical levels. ODFW recognizes at least 80 coho salmon populations within the range of this ESU (Kostow, 1995). Spawning is distributed over a relatively large number of basins, both large and small, with the bulk of the production being skewed to the southern portion of the ESU's range. There, the coastal lake systems (e.g., the Tenmile, Tahkenitch, and Siltcoos Basins) and the Coos and Coquille Rivers have been particularly productive for coho salmon. Major hydrologic units inhabited by this ESU include the Necanicum, Nehalem, Wilson-Trask-Nestucca, Siletz-Yaquina, Alsea, Siuslaw, Siltcoos, Umpqua, Coos, Coquille, and Sixes River Basins. Within these basins, numerous small streams, tributaries, and off-channel areas provide important habitat for coho salmon.

Defining specific river reaches that are critical for coho salmon is difficult because of the current low abundance of the species and of our imperfect understanding of the species' freshwater distribution, both current and historical. For example, ODFW has conducted systematic spawner surveys for the species since the 1950's and has noted that fish are often widely scattered in

larger basins and that marginal habitats may only be inhabited during years of high abundance (Kostow, 1995). Several recent efforts have been made to characterize the species' status and distribution in Oregon (Emmett *et al.*, 1991; Nickelson *et al.*, 1992; The Wilderness Society, 1993; Kostow, 1995; Weitkamp *et al.*, 1995; and OCSRI, 1997) or to identify watersheds important to at-risk populations of salmonids and resident fishes (Forest Ecosystem Management Assessment Team (FEMAT), 1993). Key among these is the ODFW effort (OCSRI, 1997) to develop a series of maps depicting ''core areas'' for coho salmon and other species. These core areas are defined as ''reaches or watersheds within individual coastal basins that are judged to be of critical importance to the sustenance of salmon populations that inhabit those basins'' (OCSRI, 1997) and are derived from 1:100,000 U.S. Geological Survey (USGS) hydrologic unit maps. The areas depicted are primarily river reaches where best available data or professional judgement indicate high concentrations of spawning or rearing coho salmon. Within the range of the Oregon Coast ESU, more than 80 areas have been identified as draft core areas, the vast majority of which are located in the larger river basins. Notably missing are core areas for smaller coastal streams which comprise approximately half of the populations in the ESU (but a small fraction of the overall ESU production). While NMFS believes that this mapping effort holds great promise to focus habitat protection and restoration efforts, the core areas are still in a draft stage and include only a subset of the areas that NMFS believes are critical habitat for coho salmon (i.e., they do not specifically identify migration corridors or essential habitat for populations in smaller streams).

Based on consideration of the best available information regarding the species' current distribution, NMFS believes that the preferred approach to identifying critical habitat for this ESU is to designate all areas accessible to any life stage of the species within the range of specified river basins. NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages; (2) takes into account the natural variability in habitat use that makes precise mapping problematic (e.g., some streams/reaches may have fish present only in years with plentiful rainfall); and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upslope areas.

While NMFS is proposing to focus on accessible river reaches, it is important to note that habitat quality is intrinsically related to the quality of upland areas and upstream areas (including headwater or intermittent streams) which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho salmon in downstream reaches. NMFS recognizes that estuarine habitats are critical for coho salmon and has included them in this designation. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions may have a major influence on its survival. However, NMFS is still evaluating whether these areas currently warrant consideration as critical habitat, particularly whether marine areas require special management consideration or protection. Therefore, NMFS is not proposing to designate critical habitat in marine areas at this time. If additional information becomes available that supports the inclusion of such areas, NMFS may revise this designation.

Essential features of coho salmon critical habitat include adequate (1) substrate, (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover/shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions. Given the vast geographic range occupied by the Oregon Coast ESU and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by Barnhart, 1986, Pauley *et al.*, 1986, California Advisory Committee on Salmon and Steelhead Trout (CACSST), 1988, Bjornn and Reiser, 1991, Nehlsen *et al.*, 1991, California State Lands Commission, 1993, Reynolds *et al.*, 1993, Botkin *et al.*, 1995, McEwan and Jackson, 1996, NMFS, 1996a, and Spence *et al.*, 1996.

Adjacent Riparian Zones

NMFS' past critical habitat designations for listed anadromous salmonids have included the adjacent riparian zone as part of the designation. In the final designations for Snake River spring/summer chinook, fall chinook, and sockeye (58 FR 68543, December 28, 1993), NMFS included the adjacent riparian zone as part of critical habitat and defined it in the regulation as those areas within a horizontal distance of 300 feet (91.4 meters) from the normal high water line. In the critical habitat designation for Sacramento River winter run chinook (58 FR 33212, June 16, 1993), NMFS included ''adjacent riparian zones'' as part of the critical habitat but did not define the extent of that zone in the regulation. The preamble to that rule stated that the adjacent riparian zone was limited to ''those areas that provide cover and shade.''

Streams and stream functioning are inextricably linked to adjacent riparian and upland (or upslope) areas. Streams regularly submerge portions of the riparian zone via floods and channel migration, and portions of the riparian zone may contain off-channel rearing habitats used by juvenile salmonids during periods of high flow. The riparian zone also provides an array of important watershed functions that directly benefit salmonids. Vegetation in the zone shades the stream, stabilizes banks, and provides organic litter and large woody debris. The riparian zone stores sediment, recycles nutrients and chemicals, mediates stream hydraulics, and controls microclimate. Healthy riparian zones help ensure water quality essential to salmonids as well as the forage species they depend on (Reiser and Bjornn, 1979; Meehan, 1991; FEMAT, 1993; and Spence *et al.*, 1996). Human activities in the adjacent riparian zone, or in upslope areas, can harm stream function and can harm salmonids, both directly and indirectly, by interfering with the watershed functions described here. For example, timber harvest, road-building, grazing, cultivation, and other activities can increase sediment, destabilize banks, reduce organic litter and woody debris, increase water temperatures, simplify stream channels, and increase peak flows. These adverse modifications reduce the value of habitat for salmon and, in many instances, may result in injury or mortality of fish. Because human activity may adversely affect these watershed functions and habitat features, NMFS concluded the adjacent riparian zone could require special management consideration, and, therefore, was appropriate for inclusion in critical habitat.

The Snake River salmon critical habitat designation relied on analyses and conclusions reached by FEMAT (1993) regarding interim riparian reserves for fish-bearing streams on Federal lands within the range of the

northern spotted owl. The interim riparian reserve recommendations in the FEMAT report were based on a systematic review of the available literature, primarily for forested habitats, concerning riparian processes as a function of distance from stream channels. The interim riparian reserves identified in the FEMAT report for fish-bearing streams on Federal forest lands are intended to (1) provide protection to salmonids, as well as riparian-dependent and associated species, through the protection of riparian processes that influence stream function, and (2) provide a high level of fish habitat and riparian protection until site-specific watershed and project analyses can be completed. The FEMAT report identified several alternative ways that interim riparian reserves providing a high level of protection could be defined, including the 300-foot (91.4 meter) slope distance, a distance equivalent to two site-potential tree heights, the outer edges of riparian vegetation, the 100-year flood plain, or the area between the edge of the active stream channel to the top of the inner gorge, whichever is greatest. The U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM) ultimately adopted these riparian reserve criteria as part of an Aquatic Conservation Strategy aimed at conserving fish, amphibians, and other aquatic-and riparian-dependent species in the Record of Decision (ROD) for the Northwest Forest Plan (FEMAT ROD, 1994).

While NMFS has used the findings of the FEMAT report to guide its analyses in ESA section 7 consultations with the USFS and BLM regarding management of Federal lands, NMFS recognizes that the interim riparian reserves may be conservative with regard to the protection of adjacent riparian habitat for salmonids since they are designed to protect salmonids as well as terrestrial species that are riparian dependent or associated. Moreover, NMFS' analyses have focused more on the stream functions important to salmonids and on how proposed activities will affect the riparian area's contribution to properly functioning conditions for salmonid habitat.

Since the adoption of the Northwest Forest Plan, NMFS has gained experience working with Federal and non-Federal landowners to determine the likely effects of proposed land management actions on stream functions. In freshwater and estuarine areas, these activities include, but are not limited to, agriculture; forestry; grazing; bank stabilization; construction/urbanization; dam construction/operation; dredging and dredged spoil disposal; habitat restoration projects; irrigation withdrawal, storage, and management; mineral mining; road building and maintenance; sand and gravel mining; wastewater/pollutant discharge; wetland and floodplain alteration; and woody debris/structure removal from rivers and estuaries. NMFS has developed numerous tools to assist Federal agencies in analyzing the likely impacts of their activities on anadromous fish habitat. With these tools, Federal agencies are better able to judge the impacts of their actions on salmonid habitat, taking into account the location and nature of their actions. NMFS' primary tool guiding Federal agencies is a document titled ''Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale'' (NMFS, 1996b). This document presents guidelines to facilitate and standardize determinations of ''effect'' under the ESA and includes a matrix for determining the condition of various habitat parameters. This matrix is being implemented in several northern California and Oregon coastal watersheds and is expected to help guide efforts to define salmonid risk factors and conservation strategies throughout the West Coast.

Several recent literature reviews have addressed the effectiveness of various riparian zone widths for maintaining specific riparian functions (e.g., sediment control, large woody debris recruitment) and overall watershed processes. These reviews provide additional useful information about riparian processes as a function of distance from stream channels. For example, Castelle *et al.*, 1994 conducted a literature review of riparian zone functions and concluded that riparian widths in the range of 30 meters (98 ft) appear to be the minimum needed to maintain biological elements of streams. They also noted that site-specific conditions may warrant substantially larger or smaller riparian management zones. Similarly, Johnson and Reba (1992) summarized the technical literature and found that available information supported a minimum 30-meter (98 ft) riparian management zone for salmonid protection.

A recent assessment funded by NMFS and several other Federal agencies reviewed the technical basis for various riparian functions as they pertain to salmonid conservation (Spence *et al.*, 1996). These authors suggest that a functional approach to riparian protection requires a consistent definition of riparian ecosystems based on ''zones of influence'' for specific riparian processes. They noted that in constrained reaches where the active channel remains relatively stable through time, riparian zones of influences may be defined based on site-potential tree heights and distance from the active channel. In contrast, they note that, in unconstrained reaches (e.g., streams in broad valley floors) with braided or shifting channels, the riparian zone of influence is more difficult to define, but recommend that it is more appropriate to define the riparian zone based on some measure of the extent of the flood plain.

Spence *et al.*, 1996 reviewed the functions of riparian zones that are essential to the development and maintenance of aquatic habitats favorable to salmonids and the available literature concerning the riparian distances that would protect these functional processes. Many of the studies reviewed indicate that riparian management widths designed to protect one function in particular, recruitment of large woody debris, are likely to be adequate to protect other key riparian functions. The reviewed studies concluded that the vast majority of large woody debris is obtained within one site-potential tree height from the stream channel (Murphy and Koski, 1989; McDade *et al.*, 1990; Robison and Beschta, 1990; Van Sickle and Gregory, 1990; FEMAT, 1993; and Cederholm, 1994). Based on the available literature, Spence *et al.*, 1996 concluded that fully protected riparian management zones of one site-potential tree would adequately maintain 90 to 100 percent of most key riparian functions of Pacific Northwest forests if the goal was to maintain instream processes over a time frame of years to decades.

Based on experience gained since the designation of critical habitat for Snake River salmon and after considering public comments and reviewing additional scientific information regarding riparian habitats, NMFS defines coho salmon critical habitat based on key riparian functions. Specifically, the adjacent riparian area is defined as the area adjacent to a stream that provides the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. Specific guidance on assessing the potential impacts of land use activities on riparian functions can be obtained by consulting with NMFS (see **ADDRESSES**), local foresters, conservation officers, fisheries biologists, or county extension agents.

The physical and biological features that create properly functioning

salmonid habitat vary throughout the range of coho salmon and the extent of the adjacent riparian zone may change accordingly, depending on the landscape under consideration. While a site-potential tree height can serve as a reasonable benchmark in some cases, site-specific analyses provide the best means to characterize the adjacent riparian zone because such analyses are more likely to accurately capture the unique attributes of a particular landscape. Knowing what may be a limiting factor to the properly functioning condition of a stream channel on a land use or land type basis and how that may or may not affect the function of the riparian zone will significantly assist Federal agencies in assessing the potential for impacts to listed coho salmon. On Federal lands within the range of the northern spotted owl, Federal agencies should continue to rely on the Aquatic Conservation Strategy of the Northwest Forest Plan to guide their consultations with NMFS. Where there is a Federal action on non-Federal lands, Federal agencies should consider the potential effects of the activities they fund, permit, or authorize on the riparian zone adjacent to a stream that may influence the following functions: shade, sediment delivery to the stream, nutrient or chemical regulation, streambank stability, and the input of large woody debris or organic matter. In areas where the existing riparian zone is seriously diminished (e.g., in many urban settings and agricultural settings where flood control structures are prevalent), Federal agencies should focus on maintaining any existing riparian functions and restoring others where appropriate by cooperating with local watershed groups and landowners. NMFS acknowledges in its description of riparian habitat function that different land use types (e.g., timber, urban, and agricultural) will have varying degrees of impact and that activities requiring a Federal permit will be evaluated on the basis of disturbance to the riparian zone. In many cases the evaluation of an activity may focus on a particular limiting factor for a watercourse (e.g., temperature, stream bank erosion, sediment transport) and whether that activity may or may not contribute to improving or degrading the riparian habitat.

Finally, NMFS emphasizes that a designation of critical habitat does not prohibit landowners from conducting actions that modify streams or the adjacent terrestrial habitat. Critical habitat designation serves to identify important areas and essential features within those areas, thus alerting both Federal and non-Federal entities to the importance of the area for listed salmonids. Federal agencies are required by the ESA to consult with NMFS to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat in a way that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species. The designation of critical habitat will assist Federal agencies in evaluating how their actions on Federal or non-Federal lands may affect listed coho salmon and determining when they should consult with NMFS on the impacts of their actions. When a private landowner requires a Federal permit that may result in the modification of coho salmon habitat, Federal permitting agencies will be required to ensure that the permitted action, regardless of whether it occurs in the stream channel, adjacent riparian zone, or upland areas, does not appreciably diminish the value of critical habitat for both the survival and recovery of the listed species or jeopardize the species' continued existence. For other actions, landowners should consider the needs of the listed fish and NMFS will assist them in assessing the impacts of actions.

Barriers Within the Species' Range

Within the range of the Oregon Coast ESU, coho salmon face a multitude of barriers that limit the access of juvenile and adult fish to essential freshwater habitats. In some cases these are natural barriers (e.g., waterfalls or high-gradient velocity barriers) that have been in existence for hundreds or thousands of years. Some pose an obvious physical barrier to any anadromous salmonids while others may only be surmountable during years when extreme river conditions (e.g., floods) provide passage.

Man-made barriers created in the past several decades can create significant problems for anadromous salmonids (California Department of Fish and Game (CDFG), 1965; CACSST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; and National Research Council, 1996). The extent of barriers such as culverts and road crossing structures that impede or block fish passage appears to be substantial. For example, of 532 fish presence surveys conducted in Oregon coastal basins during the 1995 survey season, nearly 15 percent of the confirmed ''end of fish use'' were due to human barriers, principally road culverts (OCSRI, 1997). Pushup dams/diversions and irrigation withdrawals also present significant barriers or lethal conditions (e.g., stranding, high water temperatures) to coho salmon. However, because these manmade barriers can, under certain flow conditions, be surmounted by fish or present only a temporary/seasonal barrier, NMFS does not consider them to delineate the upstream extent of critical habitat.

Since man-made impassable barriers are widely distributed throughout the range of the ESU, they can have a major downstream influence on coho salmon. Such impacts may include (1) depletion and storage of natural flows which can drastically alter natural hydrological cycles; (2) increased juvenile and adult mortality due to migration delays resulting from insufficient flows or habitat blockages; (3) loss of sufficient habitat due to delay and blockage; (4) stranding of fish resulting from rapid flow fluctuations; (5) entrainment of juveniles into poorly screened or unscreened diversions; and (6) increased mortality resulting from increased water temperatures (CACSST, 1988; Bergren and Filardo, 1991; CDFG, 1991; Reynolds *et al.*, 1993; Chapman *et al.*, 1994; Cramer *et al.*, 1995; and NMFS, 1996a). In addition to these factors, reduced flows negatively affect fish habitats in some areas due to increased deposition of fine sediments in spawning gravels, decreased recruitment of large woody debris and spawning gravels, and encroachment of riparian and non-endemic vegetation into spawning and rearing areas resulting in reduced available habitat (CASST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; and NMFS, 1996a). These dam-related factors will be effectively addressed through ESA section 7 consultations and the recovery planning process.

Several hydropower and water storage projects have been built which either block access to areas used historically by coho salmon or alter the hydrograph of downstream river reaches. NMFS has identified several dams within the range of the Oregon Coast ESU that currently have no fish passage facilities to allow coho salmon access to former spawning and rearing habitats (see Table 27 to this part). While these blocked areas are potentially significant in certain basins (e.g., areas above several dams in the Umpqua River basin), NMFS believes that currently accessible habitat may be sufficient for the conservation of the ESU. NMFS has concluded that the potential for restoring access to former spawning and rearing habitat above currently impassable man-made barriers is a significant factor to be considered in determining whether such habitat is essential for the conservation of species. NMFS solicits comments and scientific information on this issue and will consider such information prior to

issuing any final critical habitat designation. This may result in the inclusion of areas above some man-made impassable barriers in a future critical habitat designation.

In the range of this ESU, at least one hydropower dam (e.g., Soda Springs Dam) is undergoing or is scheduled for relicensing by the Federal Energy Regulatory Commission (FERC). NMFS will evaluate information developed during the process of relicensing to determine whether fish passage facilities are needed at such dams to restore access to historically available habitat. Even though habitat above such barriers is not currently designated as critical, this conclusion does not foreclose the potential importance of restoring access to these areas. Therefore, NMFS will determine on a case-by-case basis during FERC relicensing proceedings whether fish passage facilities will be required to provide access to habitat that is essential for the conservation of Oregon Coast coho salmon.

Land Ownership Within the Species' Range

Table 27 to this part summarizes the major river basins inhabited by the Oregon Coast ESU, as well as counties containing basins designated as critical habitat. Major river basins containing spawning and rearing habitat for this ESU comprise approximately 10,606 square miles in Oregon. The following counties lie partially or wholly within these basins: Benton, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, Polk, Tillamook, Washington, and Yamhill. NMFS has also derived estimates of land ownership for each of the major river basins in the range of this ESU. Due to data limitations which prevent mapping the precise river reaches inhabited by coho salmon, the ownership estimates were based on land area within entire river basins. Aggregating all basins in the Oregon Coast ESU yields ownership estimates of approximately 35 percent Federal, 9 percent state/local, 56 percent private/other, and less than 1 percent tribal lands. These data underscore that all landholders have a role to play in protecting and restoring coho salmon and their habitat in the Oregon Coast ESU.

Critical Habitat and Indian Lands

The unique and distinctive political relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

Indian lands (Indian lands are defined in the Secretarial Order of June 5, 1997, as ''any lands title to which is either: (1) held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation'') were retained by tribes or have been set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders, or agreements. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

As a means of recognizing the responsibilities and relationship described here and implementing the Presidential Memorandum of April 24, 1994, Government-to-Government Relations with Native American Tribal Governments, the Secretary of Commerce, and the Secretary of the Interior issued the Secretarial Order entitled ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' on June 5, 1997. The Secretarial Order clarifies the responsibilities of NMFS and the U.S. Fish and Wildlife Service (Services) when carrying out authorities under the ESA and requires that they consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable. The Secretarial Order further provides that the Services ''shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species.''

NMFS has determined that the Indian tribes potentially affected by a critical habitat designation for the Oregon Coast ESU include the Siletz Tribe, Cow Creek Tribe, Coquille Tribe, and Coos/Lower Umpqua/Siuslaw Tribe. The major river basins containing reservation lands are identified in Table 27 to this part. NMFS has not yet identified tribally owned fee lands or other areas where designation of critical habitat may impact tribal trust resources or the exercise of tribal rights. NMFS will identify any such lands during government-to-government consultation with affected tribes.

NMFS will notify and work with these tribes in accordance with the agency's trust responsibilities and the Secretarial Order concerning critical habitat designation in this ESU, but the agency is not proposing to designate critical habitat on the described tribal lands at this time. In addition, tribally owned fee lands and other areas where critical habitat designation may impact the exercise of tribal rights or trust resources may be identified and included or excluded from critical habitat designation in a subsequent action. If any such lands are determined to be essential to conserve listed coho salmon, such lands may be designated critical habitat in a subsequent action.

Need for Special Management Considerations or Protection

An array of management issues encompasses these habitats and their features, and special management considerations will be needed (especially on lands and streams under Federal ownership) to ensure that the essential areas and features are maintained or restored. Activities that may require special management considerations for freshwater and estuarine life stages of listed coho salmon include, but are not limited to, (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) beaver removal; (7) irrigation water withdrawals and returns; (8) mining; (9) road construction; (10) dam operation and maintenance; (11) diking and streambank stabilization; and (12) dredge and fill activities. Not all of these activities are necessarily of current concern within every watershed; however, they indicate the potential types of activities that will require consultation in the future. Activities that are conducted on private or state lands that are not federally permitted or funded, are not subject to any additional regulations under this proposed rule. However, non-Federal landowners should be aware that any significant habitat modifications that could adversely affect listed fish, could result in a ''taking'' (i.e., harming or killing) of the listed species, which is prohibited under section 9 of the ESA. While marine areas are also a critical link in the species' life cycle, NMFS has not yet concluded that special management considerations are needed to conserve the habitat features in these areas. Hence, only the freshwater and estuarine areas (and their adjacent

riparian zones) are being proposed for critical habitat at this time.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of listed coho salmon and other salmonids. More in-depth discussions are contained in the **Federal Register** documents announcing the proposed listing determination (60 FR 38011, July 25, 1995) as well as NMFS' document entitled ''Steelhead Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996a). These activities include water and land management actions of Federal agencies (i.e., USFS, BLM, U.S. Army Corps of Engineers (Corps), Federal Highway Administration (FHA), U.S. Environmental Protection Agency (EPA), Natural Resource Conservation Service (NRCS), and FERC and related or similar actions of other federally regulated projects and lands including livestock grazing allocations by USFS and BLM; hydropower sites licensed by FERC; dams built or operated by the Corps; timber sales conducted by the USFS and BLM; road building activities authorized by the FHA, USFS, and BLM; and mining and road building activities authorized by the State of Oregon. Other actions of concern include dredge and fill, mining, diking, and bank stabilization activities authorized or conducted by the Corps, and habitat modifications authorized by the Federal Emergency Management Agency (FEMA). Additionally, actions of concern could include approval of water quality standards and pesticide labeling and use restrictions administered by EPA.

The Federal agencies that will most likely be affected by this critical habitat designation include the USFS, BLM, Corps, FHA, NRCS, FEMA, EPA, and FERC. This designation will provide clear notification to these agencies, private entities, and the public of critical habitat designated for Oregon Coast coho salmon and of the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on coho salmon and their critical habitat and in determining if consultation with NMFS is needed.

Expected Economic Impacts

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of Economic and Other Factors). Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential to the conservation of the species. For the Oregon Coast ESU, NMFS has determined that the present geographic extent of their freshwater and estuarine range is likely sufficient to provide for conservation of the species, although the quality of that habitat needs improvement on many fronts. Because NMFS is not designating any areas beyond the current range of this ESU as critical habitat, the designation will result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes.

USFS and BLM manage areas of proposed critical habitat for the Oregon Coast ESU. The Corps and other Federal agencies that may be involved with funding or permits for projects in critical habitat areas may also be affected by this designation. Because NMFS believes that virtually all ''adverse modification'' determinations pertaining to critical habitat would also result in ''jeopardy'' conclusions under ESA section 7 consultations (i.e., as a result of the species being listed), the designation of critical habitat is not expected to result in significant incremental restrictions on Federal agency activities. Critical habitat designation will, therefore, result in few, if any, additional economic effects beyond those that may have been caused by the ESA listing and by other statutes.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties.

NMFS requests quantitative evaluations describing the quality and extent of marine, estuarine, and freshwater habitats (including adjacent riparian zones) for juvenile and adult coho salmon as well as information on areas that may qualify as critical habitat in coastal Oregon. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited to, (1) habitat for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. NMFS is also requesting information regarding coho salmon distribution and habitat requirements within the range of Indian lands identified in this proposal and whether these lands should be considered essential for the conservation of the listed species or whether recovery can be achieved by limiting the designation to other lands.

NMFS recognizes that there are areas within the proposed boundaries of the ESU that historically constituted coho salmon habitat but may not be currently occupied. NMFS requests information about coho salmon in these currently unoccupied areas and whether these habitats should be considered essential to the recovery of the species or excluded from designation.

For areas where natural barriers are believed to pose a migration barrier for the species, NMFS specifically requests data and analyses concerning the following: (1) Historic accounts indicating coho salmon or other anadromous salmonids occurred above the barrier; (2) data or reports analyzing the likelihood that coho salmon or other anadromous salmonids would migrate above the barrier; and (3) other information indicating that a particular barrier is or is not naturally impassable to anadromous salmonid migration. NMFS will evaluate all new information received concerning this issue and will reconsider this issue in its final critical habitat designation.

For areas potentially qualifying as critical habitat, NMFS is requesting the following information: (1) The activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact ''of the [critical habitat] designation upon proposed or ongoing activities'' (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of

the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

NMFS will review all public comments and any additional information regarding critical habitat of the Oregon Coast ESU and complete a final rule as soon as practicable. The availability of new information may cause NMFS to reassess the proposed critical habitat designation of this ESU.

Public Hearings

Joint Department of Commerce and Interior ESA implementing regulations state that the Secretaries shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list species or to designate critical habitat (50 CFR 424.16(c)(3)). Public hearings on the proposed rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters.

The public hearings on this action are scheduled as follows:

1. Monday, May 24, 6:30 p.m. to 9:00 p.m., Tillamook County Courthouse, Commissioners Conference Room, 201 Laurel Avenue, Tillamook, Oregon.

2. Tuesday, May 25, 6:30 p.m. to 9:00 p.m., Umpqua Discovery Center, 409 Riverfront Way, Reedsport, Oregon.

3. Wednesday, May 26, 6:30 p.m. to 9:00 p.m., Douglas County Courthouse, Room 216, 1036 SE Douglas Avenue, Roseburg, Oregon.

4. Thursday, May 27, 6:30 p.m. to 9:00 p.m., Eugene City Hall, Council Chambers, 777 Pearl Street, Eugene, Oregon.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin (see **ADDRESSES**) by 7 days prior to each meeting date.

Requests for specific locations or additional public hearings must be received by June 24, 1999 (see **ADDRESSES**).

References

A complete list of all references cited herein and maps describing the range of listed coho salmon ESUs are available upon request (see **ADDRESSES**) or via the internet at www.nwr.noaa.gov.

Classification

NMFS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation made pursuant to the ESA. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS proposes to designate only the current range of the Oregon Coast ESU as critical habitat. Given the affinity of this species to spawn in small tributaries, this current range encompasses a wide range of habitat, including headwater streams, as well as mainstem, off-channel, and estuarine areas. Areas excluded from this proposed designation include marine habitats in the Pacific Ocean and historically occupied areas above 6 impassable dams and headwater areas above impassable natural barriers (e.g., long-standing, natural waterfalls). Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure that their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: May 4, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

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

Authority: 16 U.S.C. 1533

§§ 226.211—226.214 [Added and reserved]

2. Sections 226.211 through 226.214 are added and reserved.

3. Section 226.215 is added to read as follows:

§ 226.215 Oregon Coast coho salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho salmon within the range of this ESU, except for reaches on Indian lands defined in Table 27 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Table 27 to this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of the ESU identified in Table 27 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, ''Hydrologic Unit Maps,'' Water Supply Paper 2294, 1987, and by the following DOI, USGS, 1:500,000 scale hydrologic unit map: State of Oregon (1974), which is incorporated by reference. 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 of the USGS publication and

maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) *Oregon Coast coho salmon (Oncorhynchus kisutch).* Critical habitat is designated to include all river reaches accessible to listed coho salmon from coastal streams south of the Columbia River and north of Cape Blanco, Oregon. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 27 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 27 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) [Reserved]

Tables 7 through 26 to this part [Added and reserved]

4. Tables 7 through 26 to this part are added and reserved.

5. Table 27 is added to part 226 to read as follows:

TABLE 27 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR OREGON COAST COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties and *tribal lands* contained in hydrologic unit and within the Range of ESU [1, 2]	Dams
Necanicum	17100201	Clatsop (OR), Tillamook (OR).	
Nehalem	17100202	Clatsop (OR), Columbia (OR), Tillamook (OR), Washington (OR).	
Wilson-Trask-Nestucca	17100203	Lincoln (OR), Polk (OR), Tillamook (OR), Washington (OR), Yamhill (OR).	McGuire Dam.
Siletz-Yaquina	17100204	Benton (OR), Lincoln (OR), Polk (OR), Tillamook (OR); *Siletz Tribe.*	
Alsea	17100205	Benton (OR), Lane (OR), Lincoln (OR).	
Siuslaw	17100206	Benton (OR), Douglas (OR), Lane (OR).	
Siltcoos	17100207	Douglas (OR), Lane (OR).	
North Umpqua	17100301	Douglas (OR), Lane (OR)	Cooper Creek Dam; Soda Springs Dam.
South Umpqua	17100302	Coos (OR), Douglas (OR), Jackson (OR), Josephine (OR); *Cow Creek Tribe.*	Ben Irving Dam; Galesville Dam.
Umpqua	17100303	Coos (OR), Douglas (OR), Lane (OR).	
Coos	17100304	Coos (OR), Douglas (OR); *Coos, Lower Umpqua, and Siuslaw Tribe; Coquille Tribe.*	Lower Pony Creek Dam.
Coquille	17100305	Coos (OR), Curry (OR), Douglas (OR).	
Sixes	17100306	Coos (OR), Curry (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

[FR Doc. 99–11696 Filed 5–7–99; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 89
Monday, May 10, 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 COMMERCE

International Trade Administration

[A–484–801]

Electrolytic Manganese Dioxide From Greece: Preliminary Results of Antidumping Duty Administrative Review and Extension of Final Results

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

ACTION: Notice of preliminary results of antidumping duty administrative review and extension of final results.

SUMMARY: In response to a request by a respondent, Tosoh Hellas A.I.C., and an interested party, Eveready Battery Corporation, the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece.

We have preliminarily determined that sales by Tosoh Hellas A.I.C. have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to refund the amount of estimated antidumping duties that it collected on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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

Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. On April 13, 1998, the Department published a notice of ''Opportunity to Request Administrative Review'' with respect to the antidumping duty order on EMD from Greece. Tosoh Hellas A.I.C. (Tosoh) requested a review on April 29, 1998, and Eveready Battery Company requested a review on April 30, 1998. In response to these requests, the Department published a notice of initiation of administrative review on May 29, 1998, in accordance with 19 CFR 351.213(b) (63 FR 29379). Although we initiated on both companies (*i.e.*, Tosoh and Eveready Battery Company), we are conducting an administrative review only of Tosoh because Eveready Battery Company is an importer and not a foreign manufacturer/exporter. On January 4, 1999, we extended the deadline for the preliminary results of the review until April 29, 1999 (see 64 FR 85). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. This merchandise is currently classifiable under HTS item number 2820.10.0000. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the order. The written product description remains dispositive.

Extension of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the foregoing time, the Department may extend the 120-day period for making a final determination to 180 days.

We determine that it is not practicable to issue the final results of this review within 120 days for the reasons contained in the Memorandum from Richard W. Moreland to Robert S. LaRussa, April 29, 1999, on file in Room B–099 of the Main Commerce Building. Therefore, we are extending the due date for the final results of review to 180 days after the publication of these preliminary results of review.

Period of Review

The period of review (POR) is from April 1, 1997, through March 31, 1998.

Product Comparability and Home Market Viability

In an October 16, 1998, submission, and in several subsequent submissions from Kerr-McGee Chemical LLC and Chemetals Inc. (collectively ''Petitioners''), the Petitioners allege three points concerning the selection of comparable merchandise: (1) the EMD grade Tosoh sold in the home market is not a foreign like product under the definition set forth in sections 771(16)(B) or (C) of the Act; (2) the market for EMD in Greece is not viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation exists which warrants rejection of home market sales for comparison purposes.

We have preliminarily determined the following: 1) the subject merchandise sold in Greece is a foreign like product as defined under section 771(16)(B) of the Act; (2) the home market is viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation does not exist within the meaning of section 773(a)(1)(iii) of the Act.

First, we examined whether the EMD grade sold in the home market met the standards of section 771(16)(B) of the Act. Specifically, pursuant to section 771(16)(B) of the Act, we evaluated the following criteria: (1) whether the

foreign like product was produced in the same country and by the same person as the subject merchandise; (2) whether the merchandise in question is like in component material or materials and in the purposes for which used; and (3) whether the two grades (*i.e.*, zinc-chloride and alkaline) of EMD are approximately equal in commercial value.

Based on the information provided on the record we found that the merchandise in question is produced in the same country and by the same person as the subject merchandise. In addition, we found that both grades of EMD are produced using the same component materials and both grades are used in the production of dry-cell batteries.

With regard to the commercial-value criterion, we preliminarily determine that the two products are ''approximately equal in commercial value'' as set forth in section 771(16)(B)(iii) of the Act, based on Tosoh's statement that ''there is no significant disparity between the grades that would prevent their being used for a proper price-to-price comparison.'' See Tosoh's January 25, 1999, submission at page 14. In addition, the products satisfy our twenty-percent difference-in-merchandise test which we generally apply to evaluate the commercial-value criterion of the statute. We have solicited additional information on this issue, however, and will analyze the issue further before making our final determination.

Based on the reasons stated above, we determined that zinc-chloride-grade EMD is a foreign like product as defined under section 771(16)(B) of the Act. For a detailed explanation of our analysis, see the Decision Memorandum from Office Director to Deputy Assistant Secretary dated April 29, 1999.

Second, we analyzed whether the home market for EMD is viable within the meaning of section 773(a)(1)(C)(ii) of the Act. Section 773(a)(1)(B)(i) of the Act identifies normal value as the price at which the foreign like product is first sold for consumption in the exporting country. Pursuant to section 773(a) of the Act, the Department will use sales in the home market as the basis for calculating normal value unless one of the conditions in section 773(a)(1)(C) applies, in which case the Department may use third-country sales as a basis for normal value. Where the home market is not viable, the Department calculates normal value based on sales to a viable third-country market or on constructed value. Under section 773(a)(1)(C)(ii) of the Act, the home market is viable where the Department determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is five percent or more of the aggregate quantity (or value) of its sales of the like product to the United States. The statute provides further that, where the aggregate quantity (or value) of the foreign like product sold in the home market is below five percent of the aggregate quantity (or value) of sales of the subject merchandise in the United States, this amount will normally be considered to be insufficient. See section 773(a)(1)(C) of the Act.

To determine whether sales of the foreign like product in the home market are in sufficient quantity to form the basis for normal value, we compared Tosoh's aggregate quantity of sales of the foreign like product in the home market to the aggregate quantity of its sales of the subject merchandise to the United States. Based on the information submitted by Tosoh, we determined that Tosoh's home market sales exceed the five-percent threshold required to find them viable as defined in section 773(a)(1)(C)(ii) of the Act.

In their October 16, 1998, submission, the Petitioners note that section 773(a)(1)(C)(iii) of the Act authorizes the Department to use third-country sales for its price-to-price comparison when a particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price. Citing the Department's decision to use third-country sales in the *Final Determination of Sales at Less Than Fair Value; Fresh Salmon From Chile*, 63 FR 31411 (June 9, 1998) (*Salmon from Chile*), the Petitioners contend that there are several similarities between that case and this one. For example, they assert that the key factors in the Department's particular-market-situation determination in *Salmon from Chile* were that the home market sales involved almost exclusively ''off-quality'' grades of salmon that were not sold in the United States and such sales were incidental to respondents. According to the Petitioners, comparable factors are also present in this case: (1) Tosoh's home market sales during the review period consisted solely of a grade of EMD for which there is no market in the United States; and (2) the home market sales are for an aberrant use and of such small volume as to be incidental to Tosoh. The Petitioners rely on the Statement of Administrative Action (SAA) that accompanied the URAA, H. Doc. 103–316, vol. 1, 103d Cong., 2d Sess. at 822 (1994), which, they assert, establishes that a particular market situation might exist where a single sale in the home market exceeds the quantitative viability threshold of five percent or where there is government control over pricing to such an extent that home market prices cannot be considered to be set competitively. In addition, the Petitioners contend, the SAA also mentions situations in which demand patterns are different in the foreign market and the United States as a possible circumstance for finding a particular market situation and basing normal value on sales to a different market.

We have found no evidence of a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Act, which would prevent a proper price comparison and which warrants a departure from the normal five-percent viability test. For example, there is no evidence to suggest that a single sale in the home market constitutes five percent of sales to the United States, that there are extensive government controls over pricing in the Greek home market, or that there are differing patterns of demand for EMD in the United States and in the home market. For a detailed explanation of our analysis, see our Decision Memorandum.

Regarding the Petitioners' reliance on *Salmon from Chile*, in that case the Department determined that a particular market situation existed because the home market was incidental to the respondents' operations. The Department found that the merchandise sold in the home market was comprised mostly of ''industrial'' or ''off-quality'' grade salmon (*i.e.*, salmon with severe defects or of poor quality) sold directly from the factory depending on availability whereas the merchandise sold in the U.S. market was comprised of ''premium'' grade sold through distributors. The record in this case does not demonstrate that the EMD Tosoh sold in the home market had severe defects or was of poor quality. In addition, unlike in *Salmon from Chile*, the respondent in this case guarantees the quality of its products, regardless of EMD grade, and both types of EMD grades meet the general specifications customers required. Also, we have not found any evidence to suggest that home market sales are incidental to Tosoh.

Therefore, we have used Tosoh's home market sales in our determination of normal value for these preliminary results.

Constructed Export Price

For the price to the United States, we used constructed export price (CEP) as defined in section 772(b) of the Act. We calculated CEP based on packed, carriage and insurance, or delivered price to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA (at 823–824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses, and indirect selling expenses incurred in the United States.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. In this review, since we do not have any cost information to calculate CEP profit, we determined that the best available sources of profit information are the 1997 financial statements which the respondent and its U.S. affiliate submitted in response to section A of our questionnaire. See Analysis Memorandum dated April 29, 1999.

Normal Value

In calculating normal value, as we stated above, we determined that the quantity of foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act because the quantity of sales in the home market was greater than five percent of the sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was for consumption in the exporting country. See Analysis Memorandum dated April 29, 1999.

We calculated monthly, weighted-average normal values. Because identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with section 771(16)(B) of the Act.

Home market prices were based on packed, free-on-truck prices to the unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market, as adjusted under section 772(d) of the Act. See 19 CFR 351.412(c)(ii).

To determine whether home market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported one channel of distribution in the home market. Therefore, we found that the one home market channel constituted one level of trade. All of Tosoh's U.S. sales were CEP sales. In this case, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act. Based on our analysis, we considered CEP sales to constitute a single level of trade. Based on the record, we found that there were significant differences between the selling activities associated with the home market level of trade and those associated with the CEP level of trade. Therefore, we determined that CEP sales are at a different level of trade than the home market sales. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, because home market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home market sales in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our Analysis Memorandum dated April 29, 1999.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period April 1, 1997, through March 31, 1998 to be as follows:

Company	Margin (Percent)
Tosh	0.00

Public Comment

Because we are requesting additional information, we will establish a briefing schedule at a later date. Parties should contact the Department within 15 days of the date of publication of this notice for the briefing and hearing schedule. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed.

Oral presentations will be limited to issues raised in the briefs. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 180 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the U.S. Customs Service to liquidate all appropriate entries at without regard to antidumping duties.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rate for Tosoh will be the rate established in the final results of this review (except that no deposit will be required if the firm has a zero or *de minimis* margin, *i.e.*, a margin less than 0.5 percent); (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, a prior review, or the original less-than-fair-value investigation (LTFV), 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) the cash-deposit rate for all other manufacturers or exporters will be 36.72 percent. This is the ''all others'' rate from the LTFV investigation which we are reinstating in accordance with the decisions by the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79 (May 25, 1993), and *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–83 (May 25, 1993). These cash-deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11723 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Final Results of Expedited Sunset Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

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

ACTION: Notice of final results of expedited sunset review: natural bristle paintbrushes and brush heads from the People's Republic of China.

SUMMARY: On January 4, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping order on natural bristle paintbrushes and brush heads from the People's Republic of China (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: May 10, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this antidumping order is natural bristle paint brushes and brush heads from the People's Republic of China. Natural bristle ''bristle packs,'' which are groups of natural bristles held together at the base with glue that closely resemble a traditional paintbrush head are within the scope of the order.[1] Excluded from the order are paintbrushes with a blend of 60 percent synthetic and 40 percent natural fibers.[2] The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers imports from all manufacturers and exporters of Chinese natural bristle paintbrushes and brush heads.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping order on natural bristle paintbrushes and brush heads from the People's Republic of China (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Paint Applicator Division (''PAD'') of the American Brush Manufacturers Association and its participating members on January 19, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* PAD claimed interested party status under 771(9)(E) of the Act as a trade association, the majority of whose members manufacture, produce, or wholesale a domestic like product in the U.S. The member companies of PAD also claimed interested party status under 771(9)(C) of the Act as U.S. producers of a domestic like product.[3] In addition, PAD indicated that five of its member companies were among the original petitioners in the proceeding.[4] We received a complete substantive response from PAD on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation

[1] *See* Memo to Joe Spetrini, Re: Final Scope Ruling on Antidumping Duty Order on Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (May 12, 1997).

[2] *See Scope Rulings,* 59 FR 25615 (May 17, 1994).

[3] The members of PAD are: EZ Paintr Corporation, Bestt Liebco, Wooster Brush Company, Purdy Corporation, Tru*Serv Manufacturing and Linzer Products Corporation.

[4] These five companies are: EZ Paintr Corporation, Bestt Liebco (formerly Joseph Lieberman & Sons, Inc.), Wooster Brush Company, Purdy Corporation, Tru*Serv Manufacturing (formerly Baltimore Brush & Roller Co., Inc.).

or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, PAD's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to the guidance on likelihood determinations provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

The antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China was published in the **Federal Register** on February 14, 1986 (51 FR 5580). Since that time, the Department has conducted several administrative reviews.[5] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, PAD argues that the Department should determine that revocation of the antidumping duty order on imports on natural bristle paintbrushes and brush heads and brush heads from China would likely result in the continuation of dumping in the United States (*see* February 3, 1999 Substantive Response of PAD at 11). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, PAD states that dumping has continued at substantial margins since the order was imposed in 1986 (*see* February 3, 1999 Substantive Response of PAD at 12).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, PAD states that imports of natural bristle paintbrushes from China have declined significantly since the order was imposed (*see* February 3, 1999 Substantive Response of PAD at 14). Citing USDOC trade statistic data and U.S. Census Bureau trade statistic data, PAD asserts that imports of the subject merchandise have decreased from 38,000,000 units in 1984 (the last full year before the petition was filed) to 1,225,000 units in 1997 (the most recent full year for which data are available). PAD notes, however, the imports of subject merchandise continue.

In conclusion, PAD argues that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) Dumping margins above *de minimis* levels have been in place since the imposition of the order, (2) imports of subject merchandise, while significantly below pre-order levels, have, nevertheless, continued since the issuance of the order, and (3) there was an increase in imports from 1994 to 1995 which coincided with the period of review in which the Department preliminarily determined that imports were being dumped at substantial margins.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels continue to exist for shipments of the subject merchandise from all Chinese producers/exporters.[6]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The Department, utilizing U.S. Census Bureau IM146 reports and data from our original investigation and subsequent administrative reviews, can confirm that imports of the subject merchandise decreased sharply following the imposition of the order but have continued in commercial quantities throughout the life of the order.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above *de minimis* levels continue in effect for exports of the subject merchandise by all known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order, respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

[5] *See Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 55 FR 42599 (October 22, 1990); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 61 FR 52917 (October 9, 1996); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 62 FR 11823 (March 13, 1997); and *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 63 FR 12449 (March 13, 1998).

[6] *See Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 55 FR 42599 (October 22, 1990); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 61 FR 52917 (October 9, 1996); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 62 FR 11823 (March 13, 1997); and *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 63 FR 12449 (March 13, 1998).

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its notice of the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC, established a country-wide weighted-average dumping margin of 127.07 percent for all imports of the subject merchandise from the People's Republic of China (51 FR 5580, February 14, 1986). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, PAD argues that the Department should report to the Commission the more recently calculated and higher margin of 351.92 percent for all Chinese exporters and producers (61 FR 52917, October 9, 1996).[7] PAD asserts that the circumstances for reporting a more recent and higher margin as described by the Department in its policy bulletin and recent determinations are present (*see* February 3, 1999 Substantive Response of PAD at 18). Citing the *Sunset Policy Bulletin,* PAD states that in certain circumstances, because a foreign exporter or producer may ''choose to increase dumping in order to maintain or increase market share,'' higher, more recently calculated margins may be more probative of a company's likely behavior in the absence of the order.

The Department agrees with PAD's argument concerning the choice of the margin rate to report to the Commission. We find increasing import volumes coupled with increasing dumping margins provide sufficient cause for the Department to report to the Commission a rate other than that calculated in the original investigation.[8]

The Department established on February 14, 1986, in the antidumping duty order, a deposit rate of 127.07 percent on all PRC-origin natural bristle paintbrushes and brush heads. On October 22, 1990, the Department calculated a margin rate for Peace Target, Inc. of 47.1 percent (55 FR 42599, 42601); all other Chinese producers/exporters retained the deposit rate established in the antidumping duty order (51 FR 5580). These deposit rates remained in effect until October 9, 1996 at the conclusion of the 1994/1995 administrative review (*see* 61 FR 52917). The Department, in the Final Results of the 1994/1995 administrative review, calculated dumping margins of 351.92 percent and therefore, established duty deposit requirements for both Hebei Animal By-Products Import/Export Corporation and the PRC as a whole (61 FR 52920). For the Final Results of the 1995/1996 administrative review, the Department established a deposit rate of 351.92 percent for all Chinese producers/exporters of the subject merchandise. Although it appears that imports during 1994 increased only slightly, there was a dramatic increase in imports during 1995, increasing roughly 200 percent from 1994 levels.[9] Therefore, the significant rise in the dumping margin during this period was associated with a substantial increase in imports. Following the publication of the 1994/1995 Final Results on October 9, 1996, imports of the subject merchandise dramatically decreased, falling by almost 70 percent between 1995 and 1996.[10]

According to the *Sunset Policy Bulletin,* ''a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order'' (*see* section II.B.2 of the *Sunset Policy Bulletin*). In addition, the Sunset Policy Bulletin notes that the Department will normally consider market share. However, absent information on relative market share, and absent argument or evidence to the contrary, we have relied on import volumes in the present case. Therefore, in light of the correlation between an increase in imports and an increase in the dumping margins, the Department finds this more recent rate is the most probative of the behavior of Chinese producers/exporters of natural bristle paintbrushes and brush heads if the order were revoked. Thus, the Department will report to the Commission the company-specific rate and country-wide rate from the Final Results of the administrative review for the period February 1, 1994 through January 31, 1995 as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Hebei Animal By-Products Import/Export Corp.	351.92
All Other Chinese Manufacturers/Exporters	351.92

This notice serves as the only 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 351.305 of the Department's regulations. Timely 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11719 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

[7] PAD states that the Department has issued final determinations of dumping margins of 351.92 percent for a total of six companies in three different review periods (1994–1995, 1995–1996, and 1996–1997) and a preliminary determination of a dumping margin of 351.92 percent for one additional company in a fourth review period (1997–1998) (February 3, 1999 Substantive Response of PAD at 18, 19).

[8] The Department recognizes that where a more recent dumping margin is ''more representative of a company's behavior in the absence of the order,'' that is the margin that should be reported to the Commission (*see* section II.B.2 of the *Sunset Policy Bulletin*). The ''more representative'' standard may be satisfied if the Department finds an ''increase in imports ... corresponding to the increase in the dumping margin'' (*see Final Results of Expedited Sunset Review: Barium Chloride From the People's Republic of China,* 64 FR 5633, 5635 (February 4, 1999).

[9] According to U.S. Census Bureau IM146 Reports, in 1995, subject merchandise increased by more than 7 million units, from 3.3 million units in 1994 to 10.4 million units in 1995.

[10] *See* U.S. Census Bureau IM146 Reports for HTSUS item number 9603.40.40.40.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty New Shipper Review

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

ACTION: Notice of preliminary results of antidumping duty new shipper review.

SUMMARY: In response to a request from one respondent, the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998. We preliminarily determine that HSI Industries (HSI) did not sell subject merchandise below normal value (NV) during the period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess no antidumping duties for HSI for the period covered by this new shipper review.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of issues and (2) a summary of the arguments (no longer than five pages, including footnotes).

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475/0649.

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1998 and July 1, 1998, the Department received requests from HSI and Kohap, Ltd. (Kohap) for new shipper reviews pursuant to section 751(a)(2) of the Act and § 351.214(b) of the Department's regulations. On July 16, 1998, we published the notice of initiation for this new shipper review (63 FR 38371). On August 12, 1998, Kohap, Ltd. (Kohap) withdrew its request for a new shipper review. On December 7, 1998, we postponed the preliminary results until May 12, 1999, and rescinded the review with respect to Kohap (63 FR 67455).

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1997 through May 31, 1998. The Department is conducting this review in accordance with section 751(a)(2)(B) of the Act, as amended.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

United States Price (USP)

In calculating USP, the Department treated HSI's sales as export price (EP) sales, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and constructed export price (CEP) methodology was not otherwise indicated. *See* section 772(a) of the Act.

EP was based on the delivered price to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean inland freight, Korean brokerage charges, ocean freight, U.S. brokerage charges, U.S. inland freight, and U.S. customs duties. We made an addition to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value (NV)

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. HSI's aggregate volume of HM sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for differences in credit expenses and deducted inland freight.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote

from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (*See e.g.*, Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).)

In implementing these principles in this review, we asked HSI to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. HSI identified two channels of distribution in the home market: (1) Wholesalers/distributors and (2) end-users. For both channels, HSI performs similar selling functions such as order processing, delivery arrangement, and customer liaison. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class are sufficiently similar, we determined that there exists one LOT for HSI's home market sales.

For the U.S. market HSI reported one LOT: EP sales made directly to its U.S. customers. When we compared EP sales to home market sales, we determined that sales in both markets were made at the same LOT. For both EP and home market transactions HSI sold directly to the customer and provided similar levels of order processing, delivery arrangement, and customer liaison. Based upon the foregoing, we determined that HSI sold at the same LOT in the U.S. as it did in the home market, and consequently no LOT adjustment is warranted.

Preliminary Results of Review

We preliminarily determine that a margin of 0.00 percent exists for HSI for the period June 1, 1997 through May 31, 1998. We will disclose calculations performed in connection with this preliminary results of review within 10 days after the date of any public announcement, or if there is no public announcement within 5 days of publication of this notice. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for filing case briefs. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 2 days after the deadline for filing rebuttal briefs unless the Secretary alters the date. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 90 days after the date of these preliminary results.

Upon completion of this new shipper administrative review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* duty assessment rates based on the total amount of antidumping duties calculated for the examined sales as a percentage of the total value of subject merchandise entered during the POR. These rates will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Upon completion of this review, the posting of a bond, or security in lieu of cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and § 351.214(e) of the Department's regulations will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this new shipper review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for HSI will be the rate established in the final results of this new shipper review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less than fair value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 new shipper review and notice are in accordance with section 751(a)(2)(B) of the Act 19 CFR 351.214(d).

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11724 Filed 5–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle From Japan: Preliminary Results, Intent Not To Revoke in Part, and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results, determination not to revoke in part, and partial rescission of antidumping duty administrative review.

SUMMARY: In response to timely requests for administrative review from the petitioner, the American Chain Association, and five manufacturers/exporters for the period April 1, 1997, through March 31, 1998, the Department of Commerce is conducting an administrative review of the antidumping finding on roller chain, other than bicycle from Japan. We have preliminarily determined that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

Because two respondents failed verification, we based the margin for

these companies on the facts available, in accordance with 776(a)(2) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on the preliminary results of this review. Parties who submit comments on issues in this proceeding should submit with each comment (1) a statement of the issue; and (2) a brief summary of their comment.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4114 and (202) 482–5849, respectively.

The Applicable Statute and Regulations

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

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1973, the Department published in the **Federal Register** an antidumping finding on roller chain, other than bicycle from Japan (roller chain) (38 FR 9926). On April 13, 1998, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping finding for the period of review (POR), April 1, 1997, through March 31, 1998 (63 FR 17985). On April 24, 1998, and April 30, 1998, we received requests for administrative review of this antidumping finding from five manufacturers/exporters of roller chain from Japan: (1) Daido Kogyo Company, Ltd. (DK); (2) Enuma Chain Manufacturing Company (Enuma); (3) Sugiyama Chain Company, Ltd. (Sugiyama); (4) Izumi Chain Manufacturing Company, Ltd. (Izumi); and (5) Oriental Chain Company (OCM), as well as from two resellers of roller chain from Japan to the United States: (1) Daido Tsusho Company, Ltd./Daido Corporation (DT) and (2) Tsubakimoto Chain Company, Ltd./U.S.-Tsubaki (Tsubakimoto). On April 27, 1998, the petitioner, the American Chain Association (ACA), requested an administrative review of these same seven entities, as well as four other manufacturers/exporters and three other resellers of roller chain from Japan to the United States. The four other manufacturers/exporters are: (1) HKK Chain Corp./Hitachi Metals Techno Ltd. (HMTL); (2) Pulton Chain Company Inc. (Pulton); (3) R.K. Excel Company Ltd. (RK); and (4) Kaga Industries Co., Ltd. (Kaga). The three other resellers are: (1) Alloy Tool Steel Inc. (ATSI); (2) HMTL/Hitachi Maxco Ltd./HKK (Hitachi Maxco); and (3) Nissho Iwai Corporation (NIC). In their April 24, 1998 letters, Daido and Enuma also requested partial revocation of the finding as to themselves, pursuant to section 351.222(b)(2)(i) of the Department's regulations. (*See* the ''Determination Not to Revoke'' section of this notice.) On May 29, 1998, the Department published a ''Notice of Initiation of Administrative Review'' (63 FR 29370) covering the POR April 1, 1997, through March 31, 1998, for the above manufacturers/exporters/resellers (collectively, the respondents).

On June 12, 1998, we issued antidumping questionnaires to the respondents. The Department received questionnaire responses in August, September, and October 1998. We issued supplemental questionnaires in November and December 1998, and January 1999. We received responses to these supplemental questionnaires in December 1998, and January and February 1999.

Partial Rescissions

1. Pulton

As a result of our analysis of factual information submitted to us during the course of this review, we have determined that Pulton made no shipments of subject merchandise to the United States during the POR. We confirmed with the United States Customs Service (Customs) that Pulton did not have entries of subject roller chain during the POR. Therefore, we are rescinding the review with respect to this company.

2. HMTL

HMTL and HMTL/Hitachi Maxco also claim to have made no shipments of roller chain to the United States during the POR. We confirmed with Customs that HMTL and HMTL/Hitachi Maxco did not have entries of subject roller chain during the POR. Consequently, we are rescinding the review with respect to these parties.

3. HKK Japan

Sugiyama sold roller chain in the United States through multiple channels of distribution. In one channel, Sugiyama sold roller chain to HKK Chain Sales, Inc. (HKK Japan), an affiliated home market reseller, who in turn sold roller chain to HKK Chain Corp. of America (HKK America), its affiliated U.S. reseller. In a different channel, Sugiyama sold roller chain directly to an affiliated U.S. reseller (hereinafter referred to as Company A since this relationship is proprietary). Pursuant to section 771(33) of the Act, we have treated HKK Japan, HKK America, and Company A as affiliates of Sugiyama. With respect to the above-referenced channels of distribution, we used United States sales of roller chain, produced and/or resold by Sugiyama, through HKK America and Company A in our margin analysis for Sugiyama. In the absence of other sales, we did not consider HKK Japan for a separate rate and are, therefore, rescinding the review with respect to HKK Japan.

4. ATSI and NIC

RK and NIC exported, and ATSI imported, roller chain produced by RK during the POR. NIC is RK's affiliated trading company in Japan. All of NIC's sales to the United States of RK-produced merchandise are made through ATSI, NIC's affiliated U.S. reseller. For purposes of these sales, we have treated RK, NIC, and ATSI as affiliated parties pursuant to section 771(33) of the Act. We used United States sales of RK-produced merchandise through NIC in our margin analysis for RK. RK also sells its merchandise directly to ATSI in the United States, who in turn sells the merchandise to unaffiliated U.S. customers. We also used these transactions in our margin analysis for RK. In the absence of other sales, we did not consider ATSI and NIC for separate rates and are rescinding the review for this purpose for these entities.

5. DT

DT sold roller chain produced by Enuma and DK during the POR. We examined the information on the record and have determined that Enuma had knowledge at the time of sale to DT that the roller chain it produced was destined for sale in the United States. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan,* 64 FR 15493, 15498 (March 31, 1999). Therefore, for sales by DT of Enuma-produced merchandise, we used the prices between Enuma and DT as United States prices and included these sales in the margin calculations for Enuma. With regard to DT's sales of DK-produced merchandise, we have treated

DT and DK as affiliated parties pursuant to section 771(33) of the Act, and have included all sales of DK-produced merchandise by or through DT in the margin calculations for DK. Under these circumstances, we did not consider DT for a separate rate in this POR and are rescinding the review for this purpose with respect to DT.

6. Tsubakimoto

We initiated the 1997–1998 review of Tsubakimoto pending the determination in the 1996–1997 administrative review regarding whether or not Tsubakimoto was revoked from the finding as a manufacturer and reseller of subject merchandise, or just as a manufacturer. We have since completed that review and determined that the revocation of Tsubakimoto from the order applied to Tsubakimoto as both a manufacturer and a reseller of subject merchandise. *See Roller Chain, Other Than Bicycle From Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 63671 (November 16, 1998) (*1996–1997 Roller Chain*). Therefore, we are preliminarily rescinding this review with respect to Tsubakimoto. However, this rescission is contingent upon the outcome of another issue in this review, the nature of which is proprietary. For further discussion of this issue and its effect on our preliminary decision to rescind this review with respect to Tsubakimoto, *see* Memorandum From Howard Smith, Financial Analyst, AD/CVD Enforcement, Group II, Office IV to The File, regarding: Preliminary Decision to Rescind with Respect to Tsubakimoto Chain Company, Ltd./U.S.-Tsubaki, the 1997–1998 Antidumping Duty Administrative Review of Roller Chain, Other Than Bicycle, from Japan, (April 30, 1999), on file in the CRU.

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of a preliminary determination if it determines that it is not practicable to complete the review within the statutory time limit. On October 14, 1998, the Department extended the time limit for the preliminary results of this case (*Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 55090).

Scope of the Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

On March 24, 1998, the Department determined that certain models of silent timing chain produced and exported by Kaga for use in automobiles are outside the scope of the antidumping finding. (*See Final Scope Ruling: Kaga's Request for Scope Ruling on Automotive Silent Timing Chain,* March 24, 1998, on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building).

Scope Issues

During the course of this review, Sugiyama raised the issue of whether 2-pitch roller chain and wrench roller chain are within the scope of the order. While these two products have been included in these preliminary review results, the Department is addressing these inquiries in the context of a separate scope proceeding and will issue its preliminary decision on these two issues shortly. Parties interested in submitting comments on the preliminary scope decision should submit such comments in the context of the separate scope proceeding, not in the context of this administrative review. The results of this scope proceeding will to the extent practicable be reflected in the analysis conducted for the final review results covering the POR.

Verification

As provided in section 782(i) of the Act, we verified information provided by the following five respondents: Izumi, Kaga, OCM, RK, and Sugiyama and its affiliates. We used standard verification procedures, including on-site inspection of the respondents' facilities, the examination of relevant sales, financial, and/or cost records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports placed on file in the CRU.

Affiliation Issues

During the course of the 1996–1997 administrative review of this finding, we noted that the majority of Izumi's home market sales were made to an affiliated home market manufacturer, hereafter referred to as Company X for proprietary reasons. Therefore, we reviewed the appropriateness of continuing our analysis of Izumi as a separate entity. In the final results of that review, we found that there was not sufficient evidence on the record of the 1996–1997 administrative review to determine that Izumi and Company X should be collapsed under the antidumping law. *See Decision Memorandum: Roller Chain, Other than Bicycle, from Japan—Izumi Chain Mfg. Co. Ltd., Affiliation Issue, 1996–1997 Administrative Review,* dated November 4, 1998, at 22. However, we stated in those final results that we would request additional information for this analysis, and further examine this issue in the context of the ongoing 1997–1998 administrative review of this finding. *See 1996–1997 Roller Chain.* During the course of the instant review, we issued an additional questionnaire to Company X and conducted verification of the information pertaining to this issue at the corporate headquarters and production facilities of both Izumi, Company X, and a joint-venture distribution company.

After analyzing the record evidence concerning this issue, we preliminarily find that the record evidence does not support a determination to collapse Izumi and Company X. The analysis entails references to business proprietary matters. Consequently, for a detailed discussion of our analysis, *see Decision Memorandum: Roller Chain, Other than Bicycle, from Japan—Izumi Chain Mfg. Co. Ltd. Affiliation Issue, 1997–1998 Administrative Review (Izumi Affiliation Memo*), dated April 30, 1999.

Facts Available

1. Application of Facts Available (FA)

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, FA in reaching the applicable determination.

Section 782(d) of the Act provides certain conditions that must be satisfied before the Department may, subject to subsection (e), disregard all or part of the information submitted by a respondent. First, this section states that, if the Department determines that a response to a request for information does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) of the Act continues that, if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

2. Selection of Adverse FA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* the Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316, at 870 (1994). To examine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b), the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–53820 (October 16, 1997).

A. Total FA

Izumi. Upon reviewing Izumi's initial response to the Department's antidumping questionnaire in this administrative review, we determined that there were certain deficiencies in Izumi's submitted information. Pursuant to section 782(d) of the Act, we provided Izumi the opportunity to explain its deficiencies and provide corrected data as appropriate. Subsequent to our receipt of Izumi's response to the Department's supplemental questionnaire, we attempted to verify the information submitted by Izumi at its corporate headquarters in Japan. Upon arrival at the verification site, Izumi provided the verification team a revised cost of production (COP) and CV database that was significantly different from its prior cost responses. Although the verifiers attempted to determine the accuracy of the information submitted by Izumi, they were unable to do so. *See Memorandum to the File* regarding *Verification of the Constructed Value and Sales Questionnaire Responses of Izumi Chain Mfg. Co., Ltd., Roller Chain, Other Than Bicycle, from Japan, Administrative Review (1997–1998) (Izumi Verification Report),* dated April 30, 1999.

After careful analysis of Izumi's responses, and as a result of our verification, we have determined that Izumi failed to satisfy all five of the requirements set forth in section 782(e) of the Act. First, the predominant portion of Izumi's submitted information could not be verified, as required by section 782(e)(2) of the Act. At the beginning of verification Izumi informed the verifying officials that the company had not prepared any of the documentation requested in the verification outline, nor had it prepared worksheets or any other form of documentation to aid in the verification process. Moreover, throughout the verification, Izumi reiterated that it could not explain the methodology it had used to prepare its questionnaire responses because the individual responsible for preparing those responses no longer worked at the company. Izumi further explained that this individual had not left any worksheets or explanatory information with regard to preparation of the questionnaire responses. Additionally, Izumi stated that since its record keeping system is paper-based (not all information is maintained on computer), it would be virtually impossible to trace most of its reported sales values, quantities, or costs through its record-keeping system. Specifically, (1) Izumi was unable to explain the methodology used to allocate material costs to individual products; (2) Izumi was unable to reconcile man hours or the total labor expense used to calculate direct labor costs to any of the company's internal books and records or to its financial statements; (3) Izumi was unable to reconcile the costs used to calculate variable overhead costs to any internal company ledgers or financial statements; (4) there were significant discrepancies between the amounts recorded in Izumi's books and ledgers for selling, general and administrative (SG&A) expenses and the values used to report SG&A expenses in Izumi's questionnaire response; and (5) Izumi was unable to reconcile the total sales quantities and values reported for U.S., home market and third country sales to its internal books and records or to its financial statements. Additionally, Izumi stated that it could not identify the methodology used to derive the revised cost data presented to the verifiers at the beginning of verification. Despite repeated requests for clarification on this point by the verifiers, company officials were unable to explain the methodology used to derive the data that had been revised only days earlier.

Second, the last-minute submission of a cost database that was significantly different from Izumi's prior cost responses, along with the verification failures, raise serious concerns as to the completeness and reliability of the information reported. Because the verification failures involve significant elements of both sales and cost information, if the Department attempted to calculate a margin based on the reported information, whether or not that margin was based on price-to-price comparisons or price-to-CV comparisons, the calculated margin would be suspect. Therefore, the results of verification provide no basis upon which to conclude that the information reported can serve as a reliable basis for reaching the applicable determination. Thus, Izumi failed to satisfy criterion (3) of section 782 (e) of the Act.

Third, Izumi has not demonstrated that it acted to the best of its ability, pursuant to section 782(e)(4) of the Act, in providing the necessary information

and in meeting the requirements established by the Department with respect to the verification of that information. Specifically, Izumi presented what was tantamount to a new cost response on the first day of verification, when its supplemental cost response had been submitted to the Department only several weeks prior to the verification. Moreover, the company was completely unprepared for the verification and offered no reasonable explanation for its lack of preparation. The company made no attempt at verification to trace through its paper-based record system, most cost items, as well as through its home market and third country sales.

For the reasons stated above, it is clear that Izumi has not met all of the requirements enumerated in section 782(e) of the Act and, therefore, application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available where information cannot be verified. Thus, a determination based on the use of facts otherwise available is warranted for Izumi in this case.

As discussed above, in selecting from the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 63 FR 53808, 53819–20 (October 16, 1997). Izumi was unable to substantiate the majority of its submitted data at verification. In fact, Izumi repeatedly stated during the verification that it was unable to explain the methodology used to derive reported costs, and was unable to provide substantiating data or reconcile reported data to its internal books and ledgers as well as financial statements. Accordingly, Izumi did not act to the best of its ability to comply with the Department's requests for information and, thus, under section 776(b) of the Act, an adverse inference is warranted. *See* the SAA at 870. Pursuant to section 776(b) of the Act, we are therefore basing Izumi's margin on total adverse FA for purposes of the preliminary results. As total adverse FA for Izumi, we have selected 17.57 percent, a rate calculated for Hitachi Metals in the 1987–1988 administrative review of this proceeding. Because we are applying FA based on secondary information (*i.e.*, a margin from a prior administrative review of this finding), we are required pursuant to section 776(c) of the Act, to corroborate, to the extent practicable, such information. For this discussion, *see* ''Corroboration of Information Used as Facts Available'' section of this notice. For a detailed discussion of the FA issue, *see* the Memorandum From the Senior Director, AD/CVD Enforcement, Group II, Office IV to the Deputy Assistant Secretary, AD/CVD Enforcement, Group II, regarding: Determination To Apply Facts Available Based on Results of Verification of Izumi Chain Manufacturing Company, Ltd., (April 30, 1999), on file in CRU.

OCM. After reviewing OCM's initial response to the Department's antidumping questionnaire in this administrative review, we determined there were certain deficiencies in OCM's submitted information. Pursuant to section 782(d) of the Act, we provided OCM an opportunity to explain its deficiencies and provide corrected data as appropriate. Subsequent to our receipt of OCM's response to the Department's supplemental questionnaire, we attempted to verify the information submitted by OCM at its corporate headquarters in Japan. However, the Department was unable to successfully verify significant elements of the cost and sales information reported by OCM. *See Memorandum to the File* regarding *Verification of the Cost and Sales Responses of Oriental Chain Manufacturing. Co., Ltd. in the 1997–1998 Antidumping Duty Administrative Review of Roller Chain, Other Than Bicycle, from Japan (OCM Verification Report*) dated April 30, 1999. Specifically, at verification, we found that a significant portion of the home market sales examined were unreported sales of merchandise identical to that sold in the United States during the POR. Regarding the reported costs examined at verification, the Department found that (1) for the control numbers examined, the per-unit cost of manufacturing (COM) used in the overall COM reconciliation differed from the per-unit COM reported to the Department, and, therefore, the reconciliation did not substantiate the reported costs; (2) company officials could not substantiate the raw material consumption quantities used to calculate the reported material costs; and (3) company officials failed to reconcile reported direct labor costs to actual labor expenses recorded in OCM's accounting records.

We have determined that the unreported home market sales discovered at verification are particularly significant because of the methodology used by OCM to report home market sales and the fact that the unreported sales constitute a significant portion of the sales examined. In a letter to the Department dated August 11, 1998, OCM stated that it could not reasonably report all home market sales because of the time required to identify the product characteristics for certain models. As an alternative, OCM stated that it planned to report home market sales of models that closely match (*i.e.*, that are identical or very similar in terms of product characteristics) the models sold in the United States during the POR. We have allowed OCM's reporting methodology given that it has been the Department's practice in previous administrative reviews of roller chain from Japan to allow respondents to report only a limited number of home market sales, contingent upon the Department's determination at verification that the reported home market sales constitute all appropriate comparison sales. However, because of the methodology used by OCM to report home market sales and the manner in which company officials maintain OCM's sales information, we were unable to use OCM's accounting records to verify, in *total*, the value or quantity of reported home market sales. Thus, we examined sales ledgers for particular months in order to determine whether company officials had properly reported OCM's home market sales of roller chain. Due to time constraints and the significant amount of monthly roller chain sales, we did not examine all sales in the selected months. Rather, we randomly selected transactions from OCM's sales ledgers and requested that company officials demonstrate that they reported the correct quantity and value for the selected transactions. We found that a significant portion of the sales selected had not been reported to the Department. *See OCM Verification Report* at 26. This finding, particularly in the absence of a total value and quantity reconciliation, raises serious concerns regarding the completeness of the reported home market sales database.

Furthermore, we have found that OCM's failure to substantiate important elements of cost is significant. The fact that OCM reconciled manufacturing costs in the company's cost of manufacturing statement to per-unit cost of manufacturing figures which differed from those reported, indicates that OCM failed to report the proper unit costs to the Department. In addition, despite the fact that in its supplemental questionnaire the Department cautioned OCM to report actual costs that take into account

variances, at verification OCM failed to reconcile reported labor costs and material costs (specifically, the material consumption quantities used to calculate material costs) to actual costs.

After careful analysis of OCM's responses, and as a result of our verification, we have determined that OCM failed to satisfy several of the requirements set forth in section 782(e) of the Act. First, OCM's information could not be verified. Second, the nature of the verification failures indicates that the information provided is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Third, OCM has not demonstrated that it acted to the best of its ability, pursuant to section 782(e)(4) of the Act, in providing the necessary information and in meeting the requirements established by the Department with respect to the verification of that information. Specifically, despite the Department's instructions and warnings regarding reporting and verification requirements, the company continued to report information in a manner that did not conform with the Department's normal requirements and it was unprepared to demonstrate at verification that it was appropriate for the Department to calculate antidumping duty margins using the reported information. These failures, particularly in light of the Department's early notification, clearly demonstrate that OCM failed to meet all of the requirements of section 782(e) of the Act. Thus, a determination based on the use of total FA is warranted for OCM.

As discussed above, in selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. In the instant review, although the OCM was aware of the Department's requirements, it did not act to the best of its ability to comply with the Department's requests for information or prepare for verification and, thus, under section 776(b) of the Act, an adverse inference is warranted. *See* the SAA at 870. Pursuant to section 776(b) of the Act, we are therefore, basing OCM's margin on total adverse FA for purposes of the preliminary results. As total adverse FA, we have selected 17.57 percent, a rate calculated for Hitachi Metals in the 1987–1988 administrative review of this proceeding. Because we are applying FA based on secondary information, *i.e.*, a margin from a prior administrative review of this finding, we are required, pursuant to section 776(c) of the Act, to corroborate to the extent practicable, such information. For this discussion *see* ''Corroboration of Information Used as Facts Available'' section of this notice. For a detailed discussion of the FA issue, *see* Memorandum From the Senior Director, AD/CVD Enforcement, Group II, Office IV to the Deputy Assistant Secretary, AD/CVD Enforcement, Group II, regarding: Determination To Apply Facts Available Based on Results of Verification of Oriental Chain Manufacturing Co., (April 30, 1999), on file in the CRU.

3. Corroboration of Information Used as FA

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is described in the SAA (at 870) as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.''

The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses, as total adverse FA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See e.g.*, *Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2088 (January 15, 1997) (*AFBs–1997*).

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (September 9, 1997) that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse [FA], the Department will disregard the margin and determine an appropriate margin.'' *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995).

In this instance, we have no reason to believe that application of the 17.57 percent rate for Hitachi Metals would be inappropriate as an adverse FA rate for certain respondents in the instant review. Therefore, where we have applied, as FA, the 17.57 percent margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products within the scope of this review that were produced by the respondents, and sold in the ordinary course of trade in the comparison market during the POR, to be foreign like products for purposes of determining the appropriate product comparisons to U.S. sales.

Fair Value Comparisons

With respect to Enuma, DK, Kaga, Sugiyama and RK, in determining whether these respondents' sales of roller chain to customers in the United States were made at less than fair value, we compared export price (EP) and constructed export price (CEP) to NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to the prices of individual U.S. transactions.

In the case of Sugiyama, the company reported that, for certain sales made by HKK America to unaffiliated U.S. customers, the roller chain was shipped directly from Sugiyama to the U.S. customers (without first entering into HKK America's U.S. inventory).

Sugiyama classified these sales as EP sales. When sales are made prior to the date of importation through an affiliate in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the affiliate in the United States acts only as a processor of sales-related documentation and a communication link (*i.e.*, ''a paper-pusher'') with the unaffiliated U.S. buyer. Where the factors indicate that the activities of the selling entity in the United States are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 10849, 10852 (March 5, 1998).

Based on our review of the record information concerning Sugiyama's sales to HKK America, where the merchandise is shipped directly from Sugiyama's plant to HKK America's U.S. customer, we preliminarily determine that these sales are CEP transactions. We note that, according to Sugiyama, ''most of HKK America's sales of subject merchandise is merchandise produced by Sugiyama and which is warehoused by HKK America prior to shipment to the first unaffiliated U.S. customer.'' *See* Sugiyama's October 15, 1998, questionnaire response at A–19. Furthermore, in describing the sales in question, Sugiyama states that ''occasionally, HKK America sells to customers merchandise that is shipped directly from Sugiyama to the U.S. customers (without first entering into HKK America's U.S. inventory).'' *See* Sugiyama's October 15, 1998, questionnaire response at A–20. Since the sales in question do not follow the normal sales path for U.S. sales made by HKK America, and, by Sugiyama's own admission, these sales only occur ''occasionally,'' we find that these sales do not follow HKK America's customary channel of distribution. With respect to HKK America's role in these sales, Sugiyama states that the ''sales agreement is between HKK America and its U.S. customers'' and that the sales price is negotiated by HKK America, and not Sugiyama. *See* Sugiyama's January 20, 1999, submission at 7. Moreover, Sugiyama states that HKK America (and not Sugiyama) provides the following services to HKK America's U.S. customers: inventory maintenance; freight and delivery services; and customer relations through commission agents. Thus, HKK America acted as more than just a paper processor or communication link for sales of Sugiyama-produced merchandise. Accordingly, for purposes of these preliminary results, we are treating the sales in question as CEP sales. *See Roller Chain, Other Than Bicycle, from Japan: Calculation Memorandum of the Preliminary Results for the 1997–1998 Administrative Review of Sugiyama Chain Company, Ltd. and its Affiliates*, April 30, 1999, on file in the CRU.

Immediately prior to verification, Sugiyama notified the Department that it included in its home market sales database a certain number of sales that it now considers to be export sales to third countries. According to Sugiyama, these sales involve customers in Japan who take delivery of the merchandise in Japan, but then sell the roller chain outside of Japan. Although these sales are coded in Sugiyama's internal records as export sales, Sugiyama states that it originally reported these sales as home market sales because there is no independent documentation confirming that these sales were, in fact, for an export destination. Upon review, however, Sugiyama now believes that the internal export coding for these sales is sufficient evidence that they were exported.

Since Sugiyama has been unable to provide any independent documentation confirming that these sales were exported to third countries, we preliminarily find that these sales should remain in the home market database. Accordingly, we have included these sales in our calculation of normal value. For a further discussion of this issue, *see Roller Chain, Other Than Bicycle, from Japan: Calculation Memorandum of the Preliminary Results for the 1997–1998 Administrative Review of Sugiyama Chain Company, Ltd. and its Affiliates*, April 30, 1999.

Export Price

We calculated EP in accordance with sections 772(a) and (c) of the Act where the respondents sold the subject merchandise directly to the first unaffiliated purchasers in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record. Specifically, for Enuma, DK, Kaga, and Sugiyama, we calculated EP based on the packed prices to unaffiliated customers in the United States from which we made deductions, where appropriate, for foreign inland freight from the plant to the port, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, and discounts because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in section 772(b), (c) and (d) of the Act, where sales to the first unaffiliated purchaser in the United States took place after importation or where CEP methodology was otherwise warranted. For DK, Kaga, Sugiyama, and RK (Enuma had no CEP transactions), we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for discounts. Also where appropriate, we deducted credit expenses, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions, where appropriate, for commissions, movement expenses (foreign inland freight, foreign brokerage and handling, international freight and insurance, U.S. duties, U.S. brokerage and handling, U.S. inland-freight and insurance, and U.S. warehousing), and pursuant to section 772(d)(3), where applicable, we made an adjustment for CEP profit.

With regard to RK and Sugiyama, the only respondents in this review who further-manufactured the merchandise in the United States, we made a deduction for the cost of further manufacturing in the United States in accordance with section 772(d)(2) of the Act.

Normal Value

1. Viability

In accordance with section 773(a)(1)(C)(ii) of the Act, we determined that the home market for each respondent serves as a viable basis for calculating NV because the aggregate volume of each respondent's HM sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.

2. Arm's-Length Transactions: Enuma and Sugiyama

Sales to affiliated customers in the home market made by Enuma and Sugiyama, which were determined not to be at arm's-length, were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the starting prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403, and in accordance with our practice, where prices to the affiliated party were on average less than 99.5 percent of the price to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. We disregarded all sales to Sugiyama's and Enuma's HM customers that did not pass the arm's-length test.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses and profit.

For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*).

The statute and the SAA support analyzing the LOT of CEP sales at the level of the constructed sale to the U.S. importer—that is, the level after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has adopted this interpretation in previous cases. *See e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50872 (September 23, 1998) *(DRAMs Final Results 96–97)*; *see also Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea*, 63 FR 8945 (February 23, 1998) (*SRAMs 1996*).

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

Customer categories such as distributors, retailers, or end-users are commonly used by petitioners or respondents to describe different LOTs, but, without substantiation, these are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed LOTs.

Our analysis of the marketing process, in both the home market and United States, begins with goods being sold by the producer and extends to the sale to the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT.

Unless we find that there are different selling functions for sales to the U.S. and home market, we will not determine that there are separate LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

If the comparison-market sale is at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See e.g., Carbon Steel Plate*, 62 FR at 61732.

Based on our analysis of these factors, we found for Enuma, Kaga, and RK that no LOT difference existed between their respective U.S. and home market sales. Therefore, we have made no LOT adjustment under section 773(a)(7)(A) of the Act for any of these three respondents. Further, based on our analysis of these factors, we concluded for DK and Sugiyama that the CEP sales are at a different LOT from the home market sales. With respect to Sugiyama, we determined that sales in the home market were made at two distinct LOTs. The first level was the same LOT as Sugiyama's U.S. sales. The second LOT in the home market is at a more remote LOT . In addition, we found that a pattern of consistent price differences existed between the two LOTs in the home market. Therefore, for Sugiyama, where appropriate (*i.e.*, where we were unable to compare sales at the same level of trade), we made a LOT adjustment under section 773(a)(7)(A) of the Act. In the case of DK, because the available data do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. For a detailed discussion of these LOT issues, see the April 30, 1999, memoranda to the File from the Team, regarding the LOT analysis for DK, Enuma, Kaga, RK, and Sugiyama, respectively.

Constructed Value

For Sugiyama's, and RK's, products for which we could not determine the NV based on HM sales of roller chain, because there were no contemporaneous sales of a comparable product, we compared U.S. prices to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the cost of manufacturing (COM) of the product sold in the United States, plus amounts for home market SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by the respective manufacturers in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and profit.

Price-to-Price Comparisons

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the

ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sale. In accordance with section 773(a)(6) of the Act, where applicable, we made adjustments to home market prices for discounts, movement expenses (inland freight, insurance, and warehousing), technical services, and advertising expenses. To adjust for differences in circumstances of sales (COS) between the home market and the EP and/or CEP transactions in the United States, we reduced home market prices by an amount for home market credit and direct selling expenses, where applicable. For comparison to EP transactions we also made an upward adjustment for U.S. credit and direct selling expenses, where appropriate. We also made adjustments for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to 19 CFR 351.410(e). In addition, based on our determination as to DK's LOT (*see* ''Level of Trade'' section of this notice), we made a CEP offset adjustment pursuant to section 773(a)(7)(B) of the Act. *See Carbon Steel Plate*, 62 FR at 61732. Further, based on our determination as to Sugiyama's LOT (*see* ''Level of Trade'' section of this notice), where appropriate, we made a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. To adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise (DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS differences. For comparisons to EP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales. We also made adjustments, where applicable, for the commission offset in the manner described above.

Currency Conversion

Pursuant to section 773A(a) of the Act, for purposes of the preliminary results, we converted foreign currencies into U.S. dollars using the official exchange rates in effect on the date of the U.S. sales. These official exchange rates are based on the daily rates identified by the Dow Jones Business Information Services. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a ''fluctuation.'' It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 35188, 35192 (July 5, 1996). The benchmark rate is defined as the moving average of the rates for the past 40 business days. Where we determined that the daily rates applicable to this review fluctuated, as defined above, we converted foreign currencies into U.S. dollars using the benchmark exchange rate.

Determination Not To Revoke

Pursuant to 19 CFR 351.222(b)(2), DK and Enuma, in letters dated April 24, 1998, requested revocation of the antidumping finding in part. In accordance with 19 CFR 351.222(e), their requests were accompanied by certifications that the companies had not sold the subject merchandise at less than NV during the current POR and would not do so in the future. DK and Enuma further certified that they sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Each company also agreed to immediate reinstatement of the antidumping duty finding, as long as any exporter or producer is subject to the finding, if the Department concludes that, subsequent to the revocation, DK or Enuma sold the subject merchandise at less than NV. Additionally, the companies claimed that the *de minimis* standard for purposes of revocation is two percent rather than 0.5 percent, citing sections 773(b)(3) and 735(a)(4) of the Act, and section 351.106(b)(1) of the Department's regulations.

As to the companies' claim that the *de minimis* standard for purposes of revocation is two percent rather than 0.5 percent, Article 5.8 of the WTO Antidumping Agreement explicitly requires signatories to apply the two percent *de minimis* standard in antidumping investigations. *See* Article 5.8. There is no such requirement regarding reviews. *See Professional Electric Power Tools from Japan: Final Results of Antidumping Duty Administrative Review*, 63 FR 6891, 6897 (February 11, 1998). In conformity with Article 5.8 of the WTO Antidumping Agreement, sections 733(b) and 735(a) of the Act were amended by the URAA to require that, in investigations, the Department treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as *de minimis*. Hence, pursuant to this change, the Department is now required to apply a two percent *de minimis* standard during investigations initiated after January 1, 1995, the effective date of the URAA (*see* sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department's regulatory practice of using a 0.5 percent *de minimis* standard during administrative reviews. As discussed above, the WTO Antidumping Agreement, the Act, the SAA and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding. In addition, the Statement of Administrative Action (SAA) also clarifies that ''[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations.'' *See* SAA at 845. The SAA further states that ''in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as de minimis.'' SAA at 844. Likewise, ''[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for de minimis.'' SAA at 845 (emphasis added). *See* 19 CFR 351.106; *see* also High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review, 61 FR 51421 (October 2, 1996). In addition, although the Department makes its determinations based on U.S. laws and regulations, we note that a recent WTO Panel Report found that the *de minimis* standard in Article 5.8 of the WTO Antidumping Agreement does not apply in the context of Article 9.3 duty assessment procedures (*i.e.* administrative reviews). *See* page 150 of the WTO Panel Report, *United States—Anti-dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above From Korea*, WT/DS99/R (adopted March 19, 1999).

Based upon the fact that Daido and Enuma have not demonstrated three consecutive years of sales at not less

than NV, we preliminarily determine that these companies have not met the requirements for revocation set forth in 19 CFR 351.222(b)(2)(i). Therefore, the Department preliminarily determines not to revoke the antidumping duty finding with respect to these companies.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period April 1, 1997 through March 31, 1998:

Manufacturer/exporter	Weighted-average margin (percent)
Daido Kogyo Company, Ltd	0.90
Enuma Chain Mfg. Company	0.03
Izumi Chain Mfg. Company Ltd	17.57
Kaga Industries Co., Ltd	7.43
OCM Chain Company	17.57
R.K. Excel Company, Ltd	0.15
Sugiyama Chain Company, Ltd	8.02

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, for CEP sales we calculated a customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer, and dividing this amount by the total estimated entered value of subject merchandise sold to each customer/importer during the POR. In order to estimate the entered value, we subtracted international and U.S. movement expenses and selling expenses incurred in the United States from the gross sales value. For assessment of EP sales we calculated a per unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of roller chain from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original 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 or any previous reviews or the original LTFV investigation, the cash deposit rate will be 15.92 percent, the ''All Others'' rate which is based on the first review conducted by the Department in which a new shipper rate [1] was established in the final results of administrative review (48 FR 51801, November 14, 1983). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary 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 administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: April 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11720 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] In 1993, the Department began using the all others rate from the original investigation as the appropriate cash deposit rate for companies not covered by a review or the original investigation. Prior to that time, the Department's practice was to use a ''new shippers'' rate resulting from a particular review as the cash deposit rate for companies whose first shipment occurred after the period covered by the review. The Department used as the ''new shippers'' rate the highest of the rates of all responding firms with shipments during the review period. This ''new shippers'' rate is unrelated to new shipper reviews conducted pursuant to the URAA under section 751(a)(2)(B) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–803]

Titanium Sponge From the Republic of Kazakhstan: Postponement of Preliminary Results of Antidumping Duty Administrative Review

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

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

SUMMARY: The Department of Commerce (''the Department'') is extending by 120 days the time limit for the preliminary results of the antidumping duty administrative review of the antidumping finding on titanium sponge from the Republic of Kazakhstan (''Kazakhstan'') (A–834–803), covering the period August 1, 1997, through July 31, 1998, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended (''the Act'') (19 U.S.C. 1675 (a)(3)(A)).

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel,

Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3936 and 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

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

Background

On September 29, 1998 (63 FR 51893), the Department initiated an administrative review of the antidumping finding on titanium sponge from Kazakhstan, covering the period August 1, 1997, through July 31, 1998. In our notice of initiation, we stated our intention to issue the final results of these reviews no later than August 31, 1999.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the foregoing time, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allows the Department to extend the time for making a preliminary and final determination to a maximum of 365 days and 180 days, respectively.

Due to the complexity of the legal and methodological issues presented by this review, the Department has determined that it is not practicable to complete the preliminary determination on this review within the time limit mandated by the Act (*See* Titanium Sponge from the Republic of Kazakhstan (A–834–803); Extension of Preliminary Results Review, dated April 29, 1999). Therefore, the Department is extending the deadline for issuing the preliminary results of this review until no later than August 31, 1999. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

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

Dated: April 30, 1999.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration

[FR Doc. 99–11721 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license world-wide to NIST's interest in the invention embodied in U.S. Patent Application 07/892,037, titled, ''Photovoltaic Solar Water Heating System'', filed June 2, 1992; NIST Docket No. 91–023US to Four Seasons Solar Products Corporations, having a place of business at 5005 Veterans Memorial Highway, Holbrook, NY 11741. The grant of the license would be for all fields of use.

FOR FURTHER INFORMATION CONTACT: D. Berkley, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899–2200.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the, **Federal Register** Vol. 59 (March 30, 1994). NIST and Four Seasons Solar Products Corporation may enter into a Cooperative Research and Development Agreement (CRADA) to further development of the invention.

U.S. Patent application 07/892,037 is owned by the U.S. Government, as represented by the Secretary of Commerce. The present invention relates to a system for heating water using solar energy, the system comprises a photovoltaic array, a water heater comprising a variable resistive load, and a controller for varying either the load characteristics of the resistive load or the power generating characteristics of the photovoltaic array, or both, to ensure maximum power transfer efficiency.

Dated: May 3, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–11647 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No.: 990208045–9045–01]

RIN 0647–ZA61

AMS Industry, Government Scholarship, and Fellowship Program

SUBJECT: American Meteorological Society's Industry, Government Scholarship, and Fellowship Program.

AGENCY: National Weather Service (NWS), Commerce.

ACTION: Notice.

SUMMARY: The NWS issues this notice to announce its intention to continue funding without competition a graduate fellowship through the American Meteorological Society's (AMS) Industry/Government Scholarship and Fellowship Program, unless qualification statements are submitted as a result of this notice. The recipient of the fellowship award chosen by the AMS will receive $15,000 toward the cost of the first year graduate study in the atmospheric, oceanic, or hydrologic sciences.

FOR FURTHER INFORMATION CONTACT: Allan C. Eustis, Chief, NWS Office of Industrial Meteorology, Room 17146, 1325 East West Highway, Silver Spring, Maryland 20910. Telephone 301–713–0258.

SUPPLEMENTARY INFORMATION: The AMS is the only known national scientific professional society which coordinates and manages a unique graduate fellowship program designed solely to recruit young people entering their first year of graduate study in the fields of atmospheric, oceanic, or hydrologic sciences. Administration costs of the

program are funded by the AMS. Participating universities provide the fellowship awardees with a tuition waiver. The recipient can apply the entire amount to the cost of the first year of graduate study. Ultimately, the awardee has the opportunity to make significant contributions to the atmospheric, oceanic, and hydrologic sciences sooner than if the fellowship awards were not available.

Subject to the availability of fiscal year 1999 funds, the NWS intends to support a single awardee beginning with the 1999 academic year.

Executive Order 12866. It has been determined that this notice is not significant under Executive Order 12866.

(**Authority:** 15 U.S.C. 313 and 15 U.S.C. 1540)

Catalogue of Federal Domestic Assistance: Refer to Catalogue of Federal Domestic Assistance under number 11.449, which addresses Independent Education and Science Projects and Programs.

Dated: May 4, 1999.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 99–11700 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043099C]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Tilefish Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, May 25, 1999, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Ramada Inn, 76 Industrial Highway, Essington, PA; telephone: 610–521–9600.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda item for this meeting is approval of the Tilefish Fishery Management Plan for public hearings.

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, such issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda 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 Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–11698 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050399C]

North 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 North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK the week of June 7, 1999.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Scientific and Statistical Committee (SSC) of the Council will meet at the Fishermen's Hall, 503 Marine Way, Kodiak, AK.

The Advisory Panel (AP) of the Council (AP) will meet at the Elk's Lodge, 102 Marine Way, Kodiak, AK.

The Council will meet at the Best Western Kodiak Inn, 236 Rezanof Drive West, Kodiak, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The SSC will begin at 8:00 a.m. on Monday, June 7, continuing through Wednesday, June 9, 1999.

2. The AP will begin at 8:00 a.m. on Monday, June 7, and continue through at least Thursday, June 10, 1999.

3. The Council will begin at 8:00 a.m. on Wednesday, June 9, continuing through at least Monday, June 14, and possibly continue into Tuesday, June 15, if necessary to complete the agenda.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the meeting location. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. The Council will receive the following reports, taking action if required:

a. Reports from NMFS and the Alaska Department of Fish and Game (ADF&G) on the current status of the groundfish fisheries off Alaska.

b. Reports from the U.S. Coast Guard and NMFS Enforcement on recent enforcement activities.

2. Final review and approval of alternatives and options for implementation of Steller sea lion protection measures for 2000 and beyond.

3. Final review and approval of fishery management plan amendments to conform with requirements of the American Fisheries Act (AFA), and final review and approval of an amendment package for fishery management measures to mitigate impacts of the AFA on non-pollock fisheries.

4. The Council will receive a committee report on implementation issues surrounding the development of inshore cooperatives.

5. The Council will hold an initial discussion of potential amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

6. Under Groundfish Management, the Council will consider the following subjects:

a. Initial review of an analysis for a halibut mortality avoidance program, if available.

b. Review a request for an experimental fishing permit for a bait testing project for Pacific cod fisheries.

c. Initial review of an analysis for allocation of Bering Sea/Aleutian

Islands Pacific cod between freezer longliners and other fixed gear.

7. Initial review of a rebuilding plan for *bairdi* crab in the Bering Sea/Aleutian Islands.

The agendas for the SSC and AP will include the above agenda issues, with the exception of Item 1, standard reports.

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 the meeting. Council 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 Helen Allen, 907–271–2809, at least 7 working days prior to the meeting date.

Dated: May 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–11697 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–22–F

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 June 9, 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: May 4, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Discretionary Grant Application under Indian Education.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 5,840.

Abstract: Application for funding for Indian Education discretionary programs of Demonstration Grants for Indian Children and Professional Development. The information is used to determine applicant eligibility and amount of awards for projects selected for funding.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 99–11629 Filed 5–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics, (ACES)

AGENCY: U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). This notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 20–21, 1999.

TIMES:

May 20—Full Council, 9:00 a.m.–1:00 p.m.; Management Committee, 1:00 p.m.–4:30 p.m.; Statistics Committee, 1:00 p.m.–4:30 p.m.; Strategy/Policy Committee, 1:00 p.m.–4:30 p.m.

May 21, 1999—Full Council 12:00 p.m.–2:30 p.m.; Statistics Committee, 8:45 a.m.–11:45 a.m.; Strategy/Policy Committee, 8:45 a.m.–11:45 a.m.; and Management Committee, 8:45 a.m.–11:45 a.m.

LOCATION: Phoenix Park Hotel, 520 North Capitol Street NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, National Center for Education Statistics, 555 New Jersey Avenue, NW, Room 400J, Washington, DC 20208–5530—(202) 219–1835.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses

disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Education Progress (NAEP). The meeting of the Council is open to the public.

The proposed agenda for the full Council includes the following:

- A status report from the NCES Commissioner on the condition of NCES;
- A presentation and discussion of legislated cost and market basket studies contained in the Higher Education Act; and
- The presentation of Committee reports. Individual meetings of the three ACES subcommittees will focus on specific topics:
- The agenda for the Management Committee includes discussion of the Education Statistics Services Institute's (ESSI) evaluation, the Commissioner's management report, a briefing on customer service activities, a report on NCES's technology activities, and a discussion of the IPEDS redesign.
- The agenda for the Statistics Committee includes a discussion of the response probability convention in assessment scales, a briefing on NAEP and international assessments, a discussion on NAGB's perspectives on the future of NAEP, a report on the total survey error project, a joint session with the Policy Committee to discuss the NAEP/SASS research activity, and a discussion on NAEP technical and policy issues.
- The agenda for the Strategy/Policy Committee includes a report on teacher licensure, a progress report on instructional practices, and a report from NECS's taskforce on life long learning.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW, Room 400J, Washington, DC 20208–7575.

Dated: May 3, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–11701 Filed 5–7–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of information collection activity.

SUMMARY: This notice announces that the National Assessment Governing Board (NAGB) will submit an Information Collection Request (ICR) to the Office of Management and Budget for approval.

The ICR is: An Investigation of Alternative Methods for Scale Anchoring and Item Mapping in the National Assessment of Educational Progress.

DATES: Public comments must be submitted on or before June 9, 1999.

ADDRESSES: Written comments should be submitted by June 9, 1999. Mail to Patricia Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168. Copies of the complete ICR and accompanying appendices may be obtained from the NAEP ALS Project Manager at the address above.

Comments may also be submitted electronically by sending electronic mail (e-mail) to *Hanick@ACT.org.* Electronic comments must be identified by the title of the ICR. No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as confidential business information (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by NAGB without prior notice.

FOR FURTHER INFORMATION CONTACT: Patirica Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168, Telephone: (319) 337–1452 or (800) 525–6930, e-mail: *Hanick@ACT.org.*

SUPPLEMENTARY INFORMATION: Electronic copies of this ICR can be obtained from the contact person listed above.

I. Information Collection Request

NAGB is seeking comments on the following Information Collection Request (ICR).

Title: An Investigation of Alternative Methods for Scale Anchoring and Item Mapping in the National Assessment of Educational Progress.

Affected Entities: Parties affected by this information collection are persons who served as panelists for pilot studies, achievement levels-setting (ALS) meetings, and validation research for the 1998 Science NAEP.

Abstract. The purpose of this information collection activity is to gather research information for NAGB to be used in evaluating the procedures for the selection of exemplar items to represent student performance on NAEP. Exemplar items are used as one of the primary means of communicating student performance on NAEP. The criteria for selecting exemplar items is critical to the ''message'' portrayed by the items when reporting the outcomes of NAEP to the public.

Two statistical criteria currently guide the selection of exemplar items: One based on item difficulty, and the other on item discrimination. Part One of the study will examine that statistical criteria used to select exemplar items by comparing various scale anchoring and item mapping methodologies. The results of these systematic comparisons will be judged not only statistically, but also according to the degree to which they agree with informed judgments about item difficulty. Collecting responses from informed judges is Part Two of the study. Because these individuals have participated in the process of setting achievement levels for the 1998 Science NAEP, they are likely to be keenly interested in the research study.

In Part One of the study, several technical aspects of the anchoring process will be investigated:

(1) Stringency of difficulty criterion (response probability criterion);

(2) Point versus interval-based estimates;

(3) Empirical versus model-based estimates;

(4) Type of discrimination criterion.

Before conducting the data analysis of the anchoring process, cross validation analyses of random half-samples of the data will be done. Four methods of analyzing the student data are planned:

(1) Empirical/interval estimation;

(2) Empirical/point estimation;

(3) Model-based/interval estimation;

(4) Model-based/point estimation.

Three factors will be considered as the criteria to determine which anchoring/mapping method is best:

(1) Consistency of results across subsamples;

(2) The degree to which the results are supported by informed judgment;

(3) The number of exemplar items produced by the method.

In Part Two of the study each prospective respondent will be sent a selection of items from the 1990 Science NAEP Physical Science item pool. All of the items have been ''released'' for public review. Respondents will be asked to rank order the items according to the perceived level of difficulty. The ranking task will involve four overlapping sets of 8–9 items per set. Each item will be displayed on a separate card. Item sets will include obtained and bogus clusters. Participants will be asked if the items appear to cluster together, and if so, what are the common tasks or content areas that form the basis of the cluster. They will be asked to determine if the clusters reflect Basic, Proficient, or Advanced performance, based on the NAGB policy definitions of achievement levels. Finally, participants will be asked the following question:

If you were told that American students can do item N, what would you assume this meant? Specifically, what percent of students would need to be able to answer correctly in order for you to agree that students can do the item? (40%, 50%, 60%, 70%, 80%, (90%, 100%).

The results of Part One will then be evaluated according to the degree to which they agree with the informed judgments about item difficulty.

The response rate for the survey used in Part Two is expected to be 80% or higher. Only persons who served as panelists for pilot studies, achievement levels-setting meetings, and validation research for the 1998 Science NAEP will be invited to participate. These individuals have shown keen interest in NAEP by their participation in the ALS process. The mailing list for these individuals is being updated, and those who can be contacted will be asked in advance if they will agree to participate in the survey. Only persons who consent will receive the survey and accompanying materials. Follow-up procedures will include mailing reminder postcards, making telephone calls, and sending replacement materials.

No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The estimated total respondent burden is 228 hours, and the average burden per respondent is 1.5 hours. This is a one-time survey. Neither small business nor other small entities are included in the survey.

II. Request for Comments

NAGB solicits comments to:

(i) Evaluate whether the proposed collection of information is an appropriate method to determine the ''message'' portrayed by the items regarding student performance on NAEP reported to the public.

(ii) Enhance the accuracy, quality, and utility of the information to be collected.

(iii) Evaluate whether the design of this survey maximizes the response rate, i.e. the number of selected persons who will respond.

Records are kept of all public comments and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC from 8:30 a.m. to 5 p.m.

Dated: May 5, 1999.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–11660 Filed 5–7–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

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), Kirtland Area Office (Sandia). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 19, 1999: 5:30 p.m.–9 p.m. (MST).

ADDRESSES: North Valley Center, 3825 4th, NW, Albuquerque, New Mexico 87110, (505) 761–4025.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185, (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.

DOE Quarterly Report

6 p.m.

- Call to Order/Roll—Diane Terry, Acting Chair
- Public Comments (10 minutes)
- Opening Comments from Acting Chair (Including brief overview of retreat, any update information and incorporation deadline)
- Facilitated Check-in
- Review Agenda
- Approve Minutes from Last Meeting
- Committee Reports

New Business

Vote on Tobi for Monthly Meeting Facilitator 7 p.m.

- Process Work lead by Tobi
  1. Including information on important issues that need to be discussed, as identified by the CAB at Retreat
  2. Consensus Building Process
  3. Ground Rules
  4. Vision Statement

Break (15 Minutes)

8:15–8:55 p.m.

- Group Discussion:
  1. Leadership Criteria
  2. Process for Electing New Officers

Public Comments (5 Minutes)

9 p.m.
Adjourn

A final agenda will be available at the meeting Wednesday, May 19, 1999.

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 Mike Zamorski'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. This notice is being published less 15 days before the date of the meeting due to programmatic issues that needed to be resolved prior to publication.

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 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, PO Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on May 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11727 Filed 5–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–240–001]

Dynegy Midstream Pipeline, Inc.; Notice of Tariff Compliance Filing

May 4, 1999.

Take notice that on April 28, 1999, Dynegy Midstream Pipeline, Inc. (DMP), 1000 Louisiana, Suite 5800, Houston, TX 77002, submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 31
First Revised Sheet No. 199

DMP states that it is submitting these sheets in compliance with the March 31, 1999 Letter Order in the above-referenced proceeding approving a non-conforming service agreement with Kansas Gas Service Company. DMP states that the March 31 Order required DMP to reflect the non-conforming service agreement with Kansas Gas Service in its tariff. DMP requests waiver of the 30-day notice requirement so that these sheets may be made effective May 1, 1999.

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. 99–11606 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–369–000]

East Tennessee Natural Gas Company, Notice of Request Under Blanket Authorization

May 4, 1999.

Take notice that on April 29, 1999, East Tennessee Natural Gas Company (East Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP99–369–000 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 by sale to the Knoxville Utilities Board (KUB), a municipality engaged in the local distribution of natural gas to the public, its Knoxville Lateral located in Knox County, Tennessee for a purchase price of $44,500. East Tennessee makes such request under its blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission. The filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

East Tennessee states that the Knoxville Lateral was constructed in order to facilitate the transportation and sale of natural gas in interstate commerce, and that KUB is the only customer served by the Knoxville Lateral. Specifically, East Tennessee proposes to abandon approximately 5.5 miles of 12-inch diameter gas pipeline and related appurtenances that extends from East Tennessee's Mile Post 3116A–101+0.0 to Mile Post 3116–101+5.54 (Side Valve 3116A–101 to Side Valve 3116A–1401). East Tennessee states that the metering facility associated with this lateral, Meter No. 75–9005, will continue to be owned by East Tennessee.

East Tennessee avers that no environmental effects will result from this proposed abandonment and sale, since ownership of the existing facilities will simply be transferred to KUB. No facilities will be constructed or removed, and it is indicated that KUB intends to operate the pipeline as part of its integrated local distribution system.

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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for fling 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. 99–11609 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–286–000]

Granite State Gas Transmission, Inc., Notice of Proposed Changes in FERC Gas Tariff

May 4, 1999.

Take notice that on April 28, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on May 1, 1999:

First Revised Sheet No. 10
Fourth Revised Sheet No. 24
Second Revised Sheet No. 141
Second Revised Sheet No. 142
Third Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
First Revised Sheet No. 147
First Revised Sheet No. 148
First Revised Sheet No. 149
First Revised Sheet No. 150
First Revised Sheet No. 441

According to Granite State, the primary purpose of its tariff filing is to revise the methodology in its Rate Schedule LMS (Load Management Service) for settling cash-outs with its transportation customers or imbalances between nominations for service and actual deliveries of gas. Granite State further states that, since it commenced restructured operations on November 1, 1993, in compliance with Order Nos. 636, *et seq.*, as an Operational Balancing Agreement (OBA) holder with Tennessee Gas Pipeline (Tennessee) it subscribed to Tennessee's Load Management Service to manage over and under daily and monthly transportation service deliveries from Tennessee for ultimate transportation and delivery to customers on Granite

State. To integrate the Tennessee Load Management Service with its operations, Granite State adopted a new Rate Schedule LMS which was a mirror of the Tennessee Load Management Service.

Granite State says that the foregoing arrangement for load balancing on its system worked well as long as Tennessee was the only upstream pipeline connected to its system. Lately, however, Granite State states that its system has been connected at two locations, in Westbrook, Maine, and Newington, New Hampshire, to the pipeline jointly owned by the Portland Natural Gas Transmission System (PNGTS) and Maritime and Northeast Pipeline, L.L.C. and PNGTS has commenced delivering gas to Granite State at these interconnections for further transportation and delivery to customers directly connected to the Granite State system. It is further stated that Maritimes is forecasting an in-service date of November, 1999, for the pipeline facilities authorized in Docket Nos. CP96–809, *et al.*

According to Granite State the revisions in its Rate Schedule LMS methodology are necessary because Granite State is now an intervening pipeline between Point Operators and OBA holders in its system and three (3) upstream pipelines. Granite State further states that the revisions in its Load Management Service which it proposes will pass through to the Point Operators and OBA holders on its system the settlements with upstream pipelines for delivery imbalances so that Granite State neither gains nor loses in the settlement process.

Granite State states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20406, in accordance with sections 385.214 or 385.211 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the 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. 99–11604 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–49–000]

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., AllEnergy Marketing Company, L.L.C. and NGG Holding LCC; Filings

May 4, 1999.

Take notice that on March 22, 1999, March 31, 1999, April 7, 1999, April 14, 1999 and April 27, 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 as part of Appendix G to their merger application, the following: (a) Applications with the Nuclear Regulatory Commission and the New Hampshire Public Utilities Commission (March 22, 1999); (b) a Joint Petition filed with the Vermont Public Service board (March 31, 1999); (c) a letter regarding the acquisition of New England Electric System by the National Electric Group plc filed with the Connecticut Department of Utility control (April 7, 1999); (d) a letter from the Federal Trade Commission granting Applicant's request for early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (April 14, 1999); and (e) an Application-Declaration filed with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 (April 27, 1999).

Any person desiring to be heard or to protest such filings 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 May 24, 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. 99–11678 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2595–000 and ER99–2596–000]

Northeast Empire Limited Partnership #2; Northeast Empire Limited Partnership #1; Notice of Filings

May 4, 1999.

Take notice that on April 23, 1999, the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending 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, 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 May 13, 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. 99–11602 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–371–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

May 4, 1999.

Take notice that on April 29, 1999, Reliant Energy Gas Transmission Company (''REGT''), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP99–371–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211 under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Arkansas under REGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7 of the NGA, all as more fully set forth in the request which is filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

REGT specifically proposes to install a 6-inch meter station, 3-inch regulator, and approximately 200 feet of 6-inch pipe on Line LT–1 in Lafayette County, Arkansas to provide additional service to Entergy Couch power plant. It is stated that the maximum deliverable volumes will be 7,300 Mdth equivalent annually and 20 MDth equivalent on a peak day. It is asserted that the cost of these new facilities is estimated to be $138,097.

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 Rule (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11608 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–397–000]

Southern Natural Gas Company; Notice of Application

May 4, 1999.

Take notice that on April 29, 1999, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–397–000 an application pursuant to the provisions of Sections 7(b) and 7(c) of the Natural Gas Act, as amended, and Subpart F of the Regulations of the Federal Energy Regulatory Commission's (Commission) thereunder, for permission and approval to abandon certain pipeline facilities and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 1,430 feet of replacement pipeline and appurtenant facilities located at the Boeuf River crossing and 1,017 feet of replacement pipeline and appurtenant facilities located at the Bayou Macon crossing, 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.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Applicant requests authorization to abandon and replace certain pipeline segments of its North Main Line, North Main Loop Line, and North Main 2nd Loop Line at the Boeuf River crossing in Morehouse and West Carroll Parishes, Louisiana and the North Main Line and North Main Loop Line at the Bayou Macon crossing in East and West Carroll Parishes, Louisiana. Applicant states that at the Boeuf River crossing, it proposes to abandon approximately .16 miles of three 12-inch O.D. segments of its North Main Line, three 12-inch O.D. of its North Main Line, three 12-inch O.D. of its North Main Loop Line, and four 12-inch O.D. segments of its North Main 2nd Loop Line. Applicant further states that at the Bayou Macon crossing, it proposes to abandon approximately 0.08 miles of three 12-inch O.D. segments of its North Main Line and three 12-inch O.D. segments of its North Main Loop Line. Applicant indicates that it also requests authorization to construct, install, and operate approximately 1430 feet of one 20-inch North Main Line segment, one 18-inch North Main Loop Line segment, and one one 24-inch North Main 2nd Loop Line segment as replacements for the Boeuf River crossings and approximately 1,017 feet of one 22-inch North Main Line segment and one 22-inch North Main Loop Line segments as replacements for the Bayou Macon crossings. Applicant asserts that the total cost of the abandonments and replacements is estimated to be $3.5 million. Applicant requests Commission approval by June 1, 1999, so that construction may begin by July 1, 1999.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 11, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11613 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–285–000]

Viking Gas Transmission Company; Notice of Filing

May 4, 1999.

Take notice that on April 27, 1999, Viking Gas Transmission Company (''Viking'') tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of May 27, 1999:

Second Revised Sheet No. 68
Original Sheet No. 85A
Fourth Revised Sheet No. 86

The purpose of this filing is to provide for the reservation of capacity for use in future expansion projects. Reservation of capacity shall enable Viking to maximize the efficient use of capacity that is or will become available and shall minimize the cost of construction and the environmental impacts of new facilities consistent with existing Commission precendent.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 99–11605 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2597–000]

Virginia Electric and Power Company; Notice of Filing

May 4, 1999.

Take notice that on April 23, 1999, Virginia Electric and Power Company filed revisions to previously filed Quarterly Reports of Short-Term Transactions.

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 May 13, 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. 99–11603 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–367–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

May 4, 1999.

Take notice that on April 28, 1999, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–367–000 a request pursuant to Sections 157.205, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization: (1) To replace and to relocate the Buildex, Inc. Meter setting and appurtenant facilities, (2) to construct approximately 1,400 feet of 4-inch lateral pipeline, and (3) to abandon in place approximately 172 feet of 4-inch connecting pipeline, all in Platte County, Missouri 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 estimated construction cost is approximately $82,079, and the reclaim cost is approximately $921. Williams also 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 therefore, 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 fro 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. 99–11610 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–083]

Alabama Power Company; Notice of Availability of Environmental Assessment

May 4, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application for the proposed Amendment of License for the Coosa River Project, located in Talladega County, Alabama, and has prepared a draft and, subsequently, a

final Environmental Assessment (EA) for the proposed action.

In the final EA, the Commission's staff analyzed the potential environmental impacts of The Utilities Board of the City of Sylacauga, Alabama (Board) constructing and operating a raw water intake and pumping station on Lay Reservoir. The staff concluded that, given the mitigative measures proposed by the Board, approval of the action would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA may also be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11607 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

May 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to License.

b. *Project No:* 2407–044.

c. *Date Filed:* April 16, 1999.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Yates and Thurlow.

f. *Location:* The project is located on the Tallapoosa River, near the Town of Tallassee, in Tallapoosa and Elmore Counties, Alabama. The project occupies 9.41 acres of United States Lands within the Yates Project boundary that are administered by the Department of Interior, Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR 4.200 or 16 USC 791(a)–825(r)

h. *Applicant Contact:* Mr. James R. Schauer, Alabama Power, Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 257–1401.

i. *FERC Contact:* Any questions on this notice should be addressed to J.W. Flint, 202–219–2667.

j. *Deadline for filing comments and or motions:* June 2, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426

Please include the project number (2407–044) on any comments or motions filed.

k. *Description of Amendment:* The licensee proposes to replace the Unit 3 turbine runner and wicket gates. The new components will be designed to be more efficient and resistant to cavitation. The Licensee will require the turbine manufacturer to achieve the upgrades or capacity and efficiency without changing the current hydraulic capacity of 1200 cfs.

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, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http//ww.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.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters in title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11611 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

May 4, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time to Commence and Complete Project Construction.

b. *Project No.:* 10395–023.

c. *Date Filed:* March 31, 1999.

d. *Applicant:* City of Augusta, Kentucky.

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam on the Ohio River, in Bracken County, Kentucky.

g. *Filed Pursuant to:* Public Law 105–213; 112 Stat. 884 (1998).

h. *Applicant Contacts:* Mr. Edward J. Rudd, P.O. Box 25 Brooksville, Kentucky, 41004, (606) 735–2950, Fax: (606) 735–2125; Mr. John R. Molm, Troutman, Sanders, LLP, 1300 I Street, N.W. Suite 500 East, Washington, D.C. 20005, (202) 274–2950, Fax: (202) 274–2994.

i. *FERC Contact:* Any questions in this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 7, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

Please include the project number (10395–023) on any comments or motions filed.

k. *Description of Request:* The licensee requests that the deadline for commencement of construction for FERC Project No. 10395–023 be extended to July 31, 2001. The deadline for completion of construction would be extended to July 31, 2003.

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, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on 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.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11612 Filed 05–07–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

May 5, 1999.

The Following Notice of Meeting is Published Pursuant to Section 3(A) of The Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 12, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR: David P. Boergers, secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a List of Matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 719th Meeting—May 12, 1999; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–10536, 004, PUBLIC UTILITY DISTRICT NO. 1 OF, OKANOGAN COUNTY, WASHINGTON
OTHER#S P–10536, 005, PUBLIC UTILITY DISTRICT NO. 1 OF, OKANOGAN COUNTY, WASHINGTON

CAH–2.
DOCKET# P–2696, 010, NIAGARA MOHAWK POWER CORPORATION

CAH–3.
OMITTED

CAH–4.
DOCKET# P–2640 013, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.
OTHER# P–2395 006, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.
P–2421, 006, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.
P–2473, 005, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.

CAH–5.
DOCKET# P–11543 000, RICHARD D. ELY, III

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–2184, 000, CONSUMERS ENERGY COMPANY

CAE–2.
OMITTED

CAE–3.
DOCKET# ER99–2244, 000, NIAGARA MOHAWK POWER CORPORATION

CAE–4.
DOCKET# ER99–2157, 000 ROCKY ROAD POWER, LLC
OTHER#S ER99–2160, 000 ASTORIA POWER LLC
ER99–2161, 000, ARTHUR KILL POWER LLC
ER99–2162, 000, HUNTLEY POWER LLC
ER99–2168, 000, DUNKIRK POWER LLC
ER99–2181, 000, SIGCORP ENERGY SERVICES, LLC
ER99–2198, 000, OTTER TAIL POWER COMPANY
ER99–2287, 000, BLACK HILLS CORPORATION
ER99–2329, 000, SOUTH EASTERN ELECTRIC DEVELOPMENT CORPORATION

CAE–5.
DOCKET# ER99–2218, 000, DETROIT EDISON COMPANY

CAE–6.
DOCKET# ER99–1650, 000, ILLINOIS POWER COMPANY
OTHER#S ER99–1331, 000, ILLINOIS POWER COMPANY

CAE–7.
OMITTED

CAE–8.
OMITTED

CAE–9.
DOCKET# ER98–2048, 000, ALLEGHENY POWER SERVICE CORPORATION

CAE–10.
OMITTED

CAE–11.
OMITTED

CAE–12.
OMITTED

CAE–13.
OMITTED

CAE–14.
OMITTED

CAE–15.
OMITTED
CAE–16.
OMITTED
CAE–17.
OMITTED
CAE–18.
OMITTED
CAE–19.
OMITTED
CAE–20.
DOCKET# OA97–97, 004, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S OA97–2, 004, NEVADA POWER COMPANY
OA97–121, 004, ORANGE & ROCKLAND UTILITIES, INC.
OA97–451, 004, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
OA97–467, 004, DELMARVA POWER & LIGHT COMPANY
OA97–596, 005, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
CAE–21.
DOCKET# OA97–117, 008, ALLEGHENY POWER SERVICE CORPORATION, MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHER#S OA97–126, 007, ILLINOIS POWER COMPANY
OA97–158, 007, NIAGARA MOHAWK POWER CORPORATION
OA97–216, 007, WISCONSIN ELECTRIC POWER COMPANY
OA97–279, 007, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–313, 007, MIDAMERICAN ENERGY COMPANY
OA97–408, 007, AMERICAN ELECTRIC POWER SERVICE CORPORATION, APPALACHIAN POWER COMPANY AND COLUMBUS SOUTHERN POWER COMPANY, ET AL.
OA97–411, 006, PACIFICORP
OA97–431, 007, BOSTON EDISON COMPANY
OA97–456, 002, BALTIMORE GAS AND ELECTRIC COMPANY
OA97–456, 003, BALTIMORE GAS AND ELECTRIC COMPANY
OA97–459, 008, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
CAE–22.
DOCKET# EL98–52, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
OTHER#S ER99–1957, 000, NORTHEAST POWER COORDINATING COUNCIL
ER99–1967, 000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON OF INDIANA
ER99–1968, 000, ILLINOIS POWER COMPANY
ER99–1969, 000, ENTERGY SERVICES, INC.
ER99–1972, 000, SOUTHERN INDIANA GAS & ELECTRIC COMPANY
ER99–1973, 000, MEMBER SYSTEMS OF NEW YORK POWER POOL
ER99–1984, 000, ALLIANT ENERGY CORPORATE SERVICES
ER99–1986, 000, VIRGINIA ELECTRIC AND POWER COMPANY
ER99–1987, 000, DAYTON POWER & LIGHT COMPANY
ER99–1991, 000, AMERICAN ELECTRIC POWER SERVICE CORPORATION
ER99–1994, 000, CAROLINA POWER & LIGHT COMPANY
ER99–1996, 000, MADISON GAS & ELECTRIC COMPANY
ER99–1997, 000, CINERGY SERVICES, INC.
ER99–1998, 000, WESTERN RESOURCES, INC.
ER99–1999, 000, CENTRAL ILLINOIS LIGHT COMPANY
ER99–2000, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–2001, 000, OHIO VALLEY ELECTRIC CORPORATION
ER99–2002, 000, ALLEGHENY POWER SERVICE COMPANY
ER99–2003, 000, FLORIDA POWER CORPORATION, FLORIDA POWER & LIGHT COMPANY AND TAMPA ELECTRIC COMPANY
ER99–2004, 000, WPS RESOURCES CORPORATION
ER99–2008, 000, EAST TEXAS ELECTRIC COOPERATIVE, INC.
ER99–2009, 000, MAINE PUBLIC SERVICE COMPANY
ER99–2010, 000, PJM INTERCONNECTION, L.L.C.
ER99–2011, 000, DUKE ENERGY CORPORATION
ER99–2012, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
ER99–2014, 000, DETROIT EDISON COMPANY AND CONSUMERS ENERGY COMPANY
ER99–2015, 000, DUQUESNE LIGHT COMPANY
ER99–2016, 000, SOUTH CAROLINA ELECTRIC & GAS COMPANY
ER99–2018, 000, AMEREN SERVICES COMPANIES
ER99–2019, 000, WISCONSIN ELECTRIC POWER COMPANY
ER99–2031, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
ER99–2032, 000, LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY
ER99–2033, 000, CLECO CORPORATION
ER99–2035, 000, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY
ER99–2036, 000, OKLAHOMA GAS & ELECTRIC COMPANY
ER99–2037, 000, EMPIRE DISTRICT ELECTRIC COMPANY
ER99–2038, 000, SOUTHWEST POWER POOL
ER99–2040, 000, UNITED ILLUMINATING COMPANY
ER99–2042,000, FIRSTENERGY CORPORATION
ER99–2074,000, ELECTRIC ENERGY, INC.
ER99–2075,000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
CAE–23.
DOCKET# EL98–52,002, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP99–283,000, SABINE PIPE LINE COMPANY
CAG–2.
DOCKET# RP98–290,002, VIKING GAS TRANSMISSION COMPANY
CAG–3.
DOCKET# RP99–267,000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–4.
DOCKET# RP98–290,001, VIKING GAS TRANSMISSION COMPANY
CAG–5.
DOCKET# RP99–133,001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER#S RP99–133,002, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–6.
DOCKET# RP99–176,005, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–7.
DOCKET# RP98–394,001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP98–394,002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–8.
DOCKET# RP99–69,003, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–9.
DOCKET# RP98–42,012, ANR PIPELINE COMPANY
CAG–10.
DOCKET# RP97–369,011, PUBLIC

SERVICE COMPANY OF COLORADO, ET AL.

OTHER#S RP98–39,019, NORTHERN NATURAL GAS COMPANY

RP98–40,021, PANHANDLE EASTERN PIPE LINE COMPANY

RP98–42,013, ANR PIPELINE COMPANY

RP98–43,011, ANADARKO GATHERING COMPANY

RP98–52,030, WILLIAMS NATURAL GAS COMPANY

RP98–53,020, KN INTERSTATE GAS TRANSMISSION COMPANY

RP98–54,021, COLORADO INTERSTATE GAS COMPANY

CAG–11.

OMITTED

CAG–12.

DOCKET# MG99–10,001, PORTLAND NATURAL GAS TRANSMISSION SYSTEM

CAG–13.

DOCKET# CP98–538,001, MIDWESTERN GAS TRANSMISSION COMPANY

CAG–14.

OMITTED

CAG–15.

DOCKET# CP98–800,000, EASTERN SHORE NATURAL GAS COMPANY

Hydro Agenda

H–1.

RESERVED

Electric Agenda

E–1.

DOCKET# RM99–2,000, REGIONAL TRANSMISSION ORGANIZATIONS NOTICE OF PROPOSED RULEMAKING.

Oil and Gas Agenda

I. PIPELINE RATE MATTERS

PR–1.

RESERVED

II. PIPELINE CERTIFICATE MATTERS

PC–1.

RESERVED

David P. Boergers,

Secretary.

[FR Doc. 99–11778 Filed 5–6–99; 12:13 pm]

BILLING CODE 6717–01–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6339–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for Customer Satisfaction Surveys

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for Customer Satisfaction Surveys, EPA #1711.02, OMB Control Number 2090–0019, expiring 10/31/99. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 9, 1999.

ADDRESSES: USEPA, Office of Policy, ORMI/CSP—2161, 401 M Street SW, Washington, DC 20460. For printed copies of the ICR, call: 202–260–3096; to fax requests and comments, dial: 202–260–4968; electronically access a draft burden table at: *http://www.epa.gov/customerservice/ombdraft.htm* after May 15; when completed for OMB submittal, the full application will be accessible electronically at: *http://www.epa.gov/icr/icr/1711.htm*

FOR FURTHER INFORMATION CONTACT: Pat Bonner, telephone: 202–260–0599; fax 202–260–4968.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which request or receive Agency information, products or services, or participate in Agency processes.

Title: Information Collection Request for Customer Satisfaction Surveys, OMB Control Number 2090–0019, EPA ICR Number 1711.02, expiring 10/31/99.

Abstract: Voluntary customer surveys will involve individuals who experience EPA services directly. The EPA will use all available feedback gathering mechanisms to determine the level of customer satisfaction with attributes of its services. The EPA will use information obtained to assist in evaluating and improving service delivery and processes. The 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 EPA encourages comments to evaluate or suggest: whether the proposed collection of information is necessary for the proper performance of the functions of the Agency; the accuracy of the Agency's burden estimate and the validity of the methodology and assumptions used; how to enhance the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including appropriate applications of information technology.

Burden: The average estimated respondent burden is 14.4 minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Time is the only direct respondent cost. Respondent cost was calculated using $550.00 as the median for a middle income family weekly earnings for wage and salary workers. The EPA estimates the following for the year 2000–2002:

Year	Respondents	Burden hours	Respondent cost
2000	97,900	31,500	$433,125
2001	89,900	17,600	242,000
2002	95,400	18,600	255,750

Dated: April 21, 1999.

Paul Lapsley,

Acting Director, Regulatory Information Division, Office of Policy.

[FR Doc. 99–11709 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6338–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; the 1999 National Survey of Local Emergency Planning Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The 1999 National Survey of Local Emergency Planning Committees. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1903.01.

SUPPLEMENTARY INFORMATION:

Title: The 1999 National Survey of Local Emergency Planning Committees, (EPA ICR No. 1903.01). This is a new collection.

Abstract: The Environmental Protection Agency, Office of Chemical Emergency Preparedness and Prevention (CEPPO) proposes to conduct a nationwide survey of Local Emergency Planning Committees (LEPCs). The information will be used to assess the general progress, status, and activity level of LEPCs. This collection also addresses reporting requirements under the Government Performance and Results Act (GPRA) of 1993, which stipulates that agencies focus on evaluating their program activities in terms of outputs and outcomes. This ICR is necessary to evaluate whether CEPPO is successfully providing national leadership and assistance to local communities in preparing for and preventing chemical emergencies.

In general, LEPCs provide local citizens an opportunity to participate actively in understanding chemical hazards, planning for emergency response, and reducing the risk of chemical emergencies. To be judged effective, LEPCs must be compliant with the requirements of EPCRA and actively carry out these responsibilities. LEPC's level of satisfaction with the information, guidance, and support they receive will heavily influence their ability to fulfill their duties. The 1999 National Survey of LEPCs will collect information to evaluate the status and activity level of these planning bodies and their satisfaction with CEPPO products and services.

This proposed information collection builds upon previous assessments conducted by CEPPO. In 1994, a nationwide survey of LEPCs revealed various strengths and weaknesses among LEPCs. Since that time, no systematic nationwide measurement of the progress of LEPCs has been conducted. Over the past five years, local emergency planning has evolved, most notably, in the amount of information that is now available to assist LEPCs in preparing for and preventing chemical emergencies. Moreover, in June 1999, this information will expand further with the addition of facility specific chemical hazards data and risk management plans made available under amendments to the Clean Air Act in 1990 (Section 112(r)—the Risk Management Program Rule for the prevention of chemical accidents).

The primary goals of this research are to: (1) track the progress of LEPCs by updating the 1994 baseline data on a series of key performance indicators; and (2) probe current LEPC practices and preferences regarding several important sets of issues—including: communications with local citizens, proactive accident prevention efforts, and the effectiveness of selected CEPPO products and services.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 02/12/99 (64 FR 7189–7190); two (2) comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Chairs or other leaders on Local Emergency Planning Committees (LEPCs).

Estimated Number of Respondents: 3,300.

Frequency of Response: This is a one-time survey.

Estimated Total Annual Hour Burden: 825 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1903.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 4, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–11713 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6339–7]

Notice of FIPS Waiver

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Chief Information Officer for the Environmental Protection Agency has granted an extension to the Agency of its waiver (published at 62 FR 17187, effective March 21, 1997) to use the RSA cryptographical features provided in Lotus Notes in lieu of the Secure Hashing Standard (FIPS PUB 180–1), Digital Signature Standard (FIPS PUB 186), and Data Encryption Standard (FIPS PUB 46–2). This waiver is pursuant to section 111(d)(3) of the Federal Property and Services Act of 1949, as amended.

DATES: This waiver extension takes effect on April 9, 1999 and is valid until January 1, 2002. If the vendor incorporates Federal standards into the core product prior to January 1, 2002, EPA will end the waiver early at that time.

FOR FURTHER INFORMATION CONTACT: Mark Day, Office of Information Resources Management, 401 M Street SW (3401), Washington, DC 20460, 202–260–4465.

SUPPLEMENTARY INFORMATION: Federal Information Processing Standards publications (FIPS PUBS) for the Secure Hashing Standard (FIPS PUB 180–1), Digital Signature Standard (FIPS PUB 186–1), and the Data Encryption Standard (FIPS PUB 46–2) establish standards for generating digital signatures (which can be used to verify authenticity) and for the encryption of sensitive information transmitted and stored electronically. These FIPS publications also allow Federal agencies to waive them under certain circumstances:.

A waiver may be granted if compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or compliance with a standard would cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

The Chief Information Officer for the Environmental Protection Agency (EPA) has granted a waiver of FIPS PUBS 180–1, 186–1, and 46–2 to enable EPA to use the build-in cryptographic features of the groupware product Lotus Notes. The installed version of Lotus Notes, currently used by EPA, does not employ FIP standard cryptography. Rather it uses cryptography that enjoys widespread use in the private sector, domestically and internationally. This cryptography is Message Digest 2 (MD–2), the Rivest, Shamir, and Adelman (RSA) signature algorithm, and RC–4 symmetric encryption algorithm.

EPA determined that the cryptographic protection embedded in Lotus Notes provides an appropriate level of security to protect the unclassified information used, communicated, and stored by EPA. Upon reviewing RSA's cryptographic capabilities, Agency personnel have concluded that if properly implemented, Lotus Notes provides a full range of security functionality that fully satisfies Agency requirements.

The additional costs required to purchase and maintain FIPS-complaint products that provide equivalent security functionality as that provided by non-standard, but commercially acceptable cryptography found in Lotus Notes is a significant factor underlying the granting of this waiver. The acquisition costs for either software- or hardware-based products that implement existing Federal cryptographic standards are unnecessary. By using the cryptography embedded in Lotus Notes, EPA is able to avoid unnecessary costs, while utilizing security functionality widely accepted by the public and private sectors.

In accordance with FIPS requirements, notice of this waiver has been sent to the National Institute of Standards and Technology, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Government Affairs of the Senate.

Dated: April 9, 1999.

Alvin M. Pesachowitz,

Acting Assistant Administrator and Chief Information Officer.

[FR Doc. 99–11714 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6338–8]

Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites; OSWER Directive 9200.4–17P; Final

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This Directive replaces the Interim Draft that was released December 1, 1997. The Directive clarifies the U.S. Environmental Protection Agency's (EPA) policy regarding the use of Monitored Natural Attenuation for the remediation of contaminated soil and groundwater at sites regulated under Office of Solid Waste and Emergency Response (OSWER) programs. These include programs administered under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''), the Resource Conservation and Recovery Act (RCRA), the Office of Underground Storage Tanks (OUST), and the Federal Facilities Restoration and Reuse Office (FFRRO). The Directive is intended to promote consistency in how monitored natural attenuation remedies are proposed, evaluated, and approved. As a policy document, it does not provide technical guidance on evaluating Monitored Natural Attenuation remedies. It provides guidance to EPA staff, to the public, and to the regulated community on how EPA intends to exercise its discretion in implementing national policy on the use of Monitored Natural Attenuation. The Directive does not, however, substitute for EPA's statutes or regulations, nor is it a regulation itself and, thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA may change this guidance in the future, as appropriate.

ADDRESSES: Electronic Access. This document can be accessed in electronic form (PDF format) through the Internet at (http://www.epa.gov/swerust1/directiv/d9200417.htm). Order Copies. To order paper copies of this report, please call the U.S. Environmental Protection Agency's (EPA) RCRA, Superfund, OUST & EPCRA Hotline at (800) 424–9346 or DC Area Local (703) 412–9810 or TDD (800) 553–7672 or TDD DC Area Local (703) 412–3323 Monday through Friday between 9:00 a.m. and 6:00 p.m. EST. Docket. This document is available at three OSWER dockets:

(1) The UST Docket is open to the general public by appointment only between the hours of 9:00 a.m. and 4:00 p.m. EST Monday through Friday. No security clearance is necessary. Visitors may make photocopies of documents. The street address is: Office of Underground Storage Tanks Docket, 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202. Telephone numbers are (703) 603–9230 and (703) 603–9234 (fax).

(2) The RCRA Docket is located in the RCRA Information Center (RIC). The RIC is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday, however, it is recommended that visitors call ahead to make an appointment so that the material they wish to view is ready when they arrive. Patrons may call for assistance at (703) 603–9230, send a fax to (703) 603–9234, or send an E-mail to rcra-docket@epamail.epa.gov. Patrons may write to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The RIC is located at 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202.

(3) The Superfund Docket is open to the general public by appointment only between the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday. No clearance is necessary and requestors of documents must make their own photocopies. There is no photocopying charge for documents less than 266 pages in length. The street address of the Superfund Docket/Document Information Center is 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202. The telephone numbers are (703) 603–9232 and (703) 603–9240 (fax). The E-mail address is: superfund.docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the OSWER Monitored Natural Attenuation Directive contact Hal White, via E-mail at white.hal@epa.gov, telephone at (703)–603–7177, fax at (703)–603–9163, or via U.S. Mail to US EPA (5403G), 401 M Street, SW, Washington DC 20460.

Dated: April 28, 1999.

Sammy Ng,

Acting Director, Office of Underground Storage Tanks.

[FR Doc. 99–11712 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–845]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 5, 1999, the Commission released a public notice announcing the May 25 and May 26, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Suite 6–A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: May 5, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, May 25, 1999, from 8:30 a.m., until 5:00 p.m., and on Wednesday, May 26, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW, Room TW–C305, Washington, DC 20554.

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, May 25, 1999

1. Approval of April 21–22, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report. Description of ''next steps'' regarding the identification and management of LNP implementation issues.
3. Industry Numbering Committee (INC) Report.
4. Numbering Resource Optimization (NRO) Working Group Report. Update on review of three COCUS alternatives (AT&T, Lockheed Martin NANPA, and US West models) and possible fourth alternative.
5. Cost Recovery Working Group Report.
6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

Wednesday, May 26, 1999

7. Lockheed Martin NANPA periodic report on exhaust projection; information on Central Office Code (CO Code) numbering usage and assignment trends. NANC discussion of future collaboration with NANPA on the exhaust study.
8. Steering Group Report.
9. Number Portability N–1 Structure. Informational report regarding an initiative by Committee T1S1, proposing reexamination of the number portability N–1 structure.
10. Other Business.

Federal Communications Commission.

Diane Griffin Harmon,

Assistant Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–11704 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–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 May 24, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Wittkopf Enterprises Limited Partnership, Florence, Wisconsin; to acquire voting shares of Florence Bancorporation, Inc., Florence, Wisconsin, and thereby indirectly acquire voting shares of State Bank of Florence, Florence, Wisconsin.

Board of Governors of the Federal Reserve System, May 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11590 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

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 May 25, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert W. Gentry, Denton, Texas; to acquire additional voting shares of Lake Cities Financial Corporation, Lake Dallas,Texas, and thereby indirectly acquire additional voting shares of Lake Cities State Bank, Lake Dallas, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. William Marvin Eames, Lafayette, California; to acquire additional voting shares of East County Bank, Antioch, California.

Board of Governors of the Federal Reserve System, May 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11732 Filed 5–7–99; 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 June 3, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. BT Financial Corporation, Johnstown, Pennsylvania; to acquire 100 percent of the voting shares of First Philson Corp., Berlin, Pennsylvania, and thereby indirectly acquire First Philson Bank, N.A., Berlin, Pennsylvania.

2. First Leesport Bancorp, Inc., Leesport, Pennsylvania; to merge with Merchants of Shenadoah Ban-Corp, Shenadoah, Pennsylvania, and thereby indirectly acquire Merchants Bank of Pennsylvania, Shenadoah, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Sanwa Bank, Limited, Osaka, Japan; to acquire up to 32 percent of the voting share of the Toyo Trust and Banking Company, Tokyo, Japan, and thereby indirectly acquire Toyo Trust Company of New York, New York, New York.

Board of Governors of the Federal Reserve System, May 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11588 Filed 5–7–99; 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 June 4, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling, Green, Ohio (in formation), and its wholly-owned subsidiary, FWBI Acquisition Corp., Bowling Green, Ohio; to merge with First Western Bancorp, Inc., New Castle, pennsylvania, and thereby indirectly acquire First Western Bank, N.A., New Castle, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Florida Business BancGroup, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bay Cities Bank, Tampa, Florida (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Financial Group, Ltd., Swansea, Illinois; to acquire 100 percent

of the voting shares of Union Bank of Illinois, Swansea, Illinois (in organization). Comments regarding this application must be received by May 25, 1999.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Kircher Bank Shares, Inc., Olivia, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Olivia, Olivia, Minnesota.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Stockman Financial Corporation, Miles City, Montana; to acquire 100 percent of the voting shares of Terry Bancshares, Inc., Terry, Montana, and thereby indirectly acquire State Bank of Terry, Terry, Montana.

Board of Governors of the Federal Reserve System, May 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11731 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire Wood Bancorp, Inc., Bowling Green, Ohio, and thereby indirectly acquire First Federal Bank, FSB, Bowling Green, Ohio, and thereby engage in permissible savings and loan activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received by June 3, 1999.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Commonwealth Bancshares, Inc., Shelbyville, Kentucky; to engage *de novo* through its subsidiary, First Security Trust Bank, F.S.B. Florence, Kentucky (in organization), in operating a federal savings bank, pursuant to § 225.28(b)(4)(ii). Comments regarding this application must be received by June 3, 1999.

Board of Governors of the Federal Reserve System, May 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11589 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stichting Prioriteit ABN AMRO Holding, Stichting Administratiekantoor ABN AMRO Holding, ABN AMRO Holding N.V., and ABN AMRO Bank N.V., all in Amsterdam, The Netherlands; to acquire a 50 percent equity interest in ABN AMRO Rothschild LLC, New York, New York (Company), and thereby engage in providing financial and investment advisory services and agency transactional services, pursuant to §§ 225.28(b)(6) and (7) of Regulation Y, and underwriting equity securities (*see Citicorp*, 73 Fed. Res. Bull. 473 (1987), as modified; *J.P. Morgan & Co.*, 75 Fed. Res. Bull. 192 (1989), as modified).

Company proposes to provide advisory services with respect to registered public offerings, private placements, and secondary block trades of equity securities. Company also proposes to engage in the syndication of equity underwriting commitments, supervision of the execution of equity underwriting commitments, coordination of distribution activities for equity offerings, and coordination of after-market trading in connection with distributions of equity securities. These activities will be conducted in North and South America.

Board of Governors of the Federal Reserve System, May 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11730 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Governmentwide Policy Advisory Board, Committee for Excellence in Customer Satisfaction

AGENCY: Office of Governmentwide Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is

intended to notify the public of the opportunity to attend.

DATES AND TIMES: May 27, 1999, 9:00 AM to 5:00 PM.

ADDRESSES: Old Executive Office Building, 17th and Pennsylvania Avenue, NW, Washington, DC. Morning session: Vice President's Ceremonial Office (Room 274) Afternoon session: Indian Treaty Room (Room 474).

FOR FURTHER INFORMATION CONTACT: Lt. Colonel Vic Helbling, Project Manager, Customer Satisfaction Initiative, Federal Quality Consulting Group, 1700 G Street, NW-Third Floor-Washington, DC 20552. Telephone: (202) 906–6068. Facsimile: (202) 906–6162. E-Mail: customer.service@npr.gov.

SUPPLEMENTARY INFORMATION: This is the first meeting of the Governmentwide Policy Board's Committee for Excellence in Customer Satisfaction. The Committee is responsible for providing advice and recommendations regarding new and ongoing initiatives to improve customer satisfaction with the services provided by the Executive Branch.

The Committee's planned agenda includes the following:

9:00 to 9:15 Call to Order and Opening Remarks. Moreley Winograd, Senior Policy Advisor to the Vice President.
9:15 to 9:45 Introductions and Small Group Discussions.
9:45 to 10:00 Break.
10:00 to 12 noon Perspectives on Improving Customer Service and the Role of the Committee—Executive Roundtable Discussion.
12 noon to 1:00 Lunch.
1:15 to 1:30 Security Clearance for re-entry. Convene in the Indian Treaty Room #474 of the Old Executive Office Building with Agency Heads and members of the President's Management Council (PMC).
1:30 to 2:00 Recap of the morning session and Introductions of Small Groups.
2:00 to 2:30 Committee Members Interview Agency Heads and PMC members on Roles and Relationships.
2:30 to 2:45 Break.
2:45 to 4:00 Executive Roundtable Discussion on the Charter and Action Items for the Committee and Agency Heads.
4:00 to 4:30 Summary of Decisions.
4:30 to 5:00 Public Comment Period.
5:00 Adjourn.

The meeting of the Committee is open to the public; however, advance registration is required due to the limited seating available and the need to obtain prior clearance to enter the Old Executive Office Building. Attendance will be confirmed on a first-come, first-served basis. You must provide the following information by the close-of-business on May 25, 1999, to the point of contact listed above in order to be admitted: (a) Full name of the attendee; (2) Date of birth, and (3) Social Security number. In order to enter the Old Executive Office Building at the time of the meeting, you must present a form of legal identification bearing your picture and the personal information requested in this paragraph.

With advance notification to the contact person listed above, members of the public may make brief statements from 4:30 to 5:00. Oral statements may not exceed 5 minutes in length. Written statements may also be filed with the Committee for its consideration. Written statements should be submitted to the address listed above no later than May 26,1999.

Individuals requiring special assistance should contact the person listed above no later than May 17, 1999.

Dated: May 4, 1999.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 99–11717 Filed 5–7–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on June 7–8, 1999, at the Radisson-Barcelo, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, June 7 and Tuesday, June 8 from 8:30 a.m. to 6:00 p.m. at the Radisson-Barcelo, 2121 P Street, NW, Washington, DC 20037. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Appropriations, Discrimination, International, Prevention, Prison, Racial Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Andrea Hall at (301) 986–4870 no later than May 21, 1999.

Dated: April 14, 1999.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 99–11591 Filed 5–7–99; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to allow a proposed information collection: ''Medical Expenditure Panel Survey Medical Provider Component (MEPS–MPC) for 1998, 1999 and 2000.'' In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR, invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 9, 1999.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–6659.

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Panel Expenditure Survey Medical Provider Component (MEPS–MPC) for 1998, 1999 and 2000.

The ''Medical Panel Expenditure Survey Medical Provider Component (MEPS–MPC) for 1998, 1999 and 2000.''

is a survey of hospitals, physicians and other medical providers. The purpose of this survey is to supplement and verify the information provided by household respondents in the household component of the MEPS (MEPS–HC) about the use of medical services. With the permission of members of the households surveyed in the MEPS–HC, we plan to contact their medical providers to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged the amount that was paid and the source of payment. Thus, the MPC is derived from or is based upon the core survey, the MEPS–HC.

The Medical Expenditure Panel Survey Household Component (MEPS–HC) to be conducted will provide annual, nationally representatives estimates of health care use, expenditures, and sources of payment and insurance coverage for the U.S. civilian non-institutionalized population. MEPS is cosponsored by the Agency for Health Care Policy and Research (AHCPR) and the National Center for Health Statistics (NCHS).

MEPS data confidentially is protected under sections 308(d) and 903(c) of the Public Health Service Act (42 U.S.C. 242m and 42 U.S.C. 299a–1).

Data from medial providers linked to household respondents in the MEPS Household component for calendar year 1998 will be collected beginning in 1999 and continuing into the year 2000, data for calendar year 1999 will be collected beginning in 2000 and continue into the year 2001. Data for calendar year 2000 will be collected beginning in 2001 and continue into the year 2002.

Method of Collection

The medical provider survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent.

The estimated annual hour burden is as follows:

Type of provider	Number of respondents	Average number of patients/providers	Average number of events/patient	Average burden/event
Hospital	3,500	2	3.2	5 min. (.083 hrs.)
Office-based doctor	8,500	1.3	3.5	5 min.
Separately billing doctor (e.g., radiologists, anesthesiologists or those who bill hospital patients directly).	800	1	1.3	5 min
Home health	500	1.1	5.8	5 min.
Pharmacy	6,000	1.8	10.3	3 min.

Estimated Annual Burden Total: 11,759 hours.

Request for Comments

Comments are invited on: (a) The necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques of other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Office (see above).

Dated: May 3, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–11534 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hanford Thyroid Morbidity Study Advisory Committee: Cancellation of Meeting.

This notice announces the cancellation of a previously announced advisory committee meeting.

Federal Notice Citation of Previous Announcement: 64 FR 19542–19543, April 21, 1999.

Previously Announced Times and Dates: 1 p.m.–5 p.m., May 6, 1999, and 7 p.m.–9 p.m., May 6, 1999.

Change in the Meeting: This meeting has been cancelled.

Contact Persons for Additional Information: General information may be obtained from Mr. Mike Donnelly, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), National Center for Environmental Health (NCEH), CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Technical information may be obtained from Dr. Paul Garbe, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11633 Filed 5–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m., June 17, 1999. 8 a.m.–5:30 p.m., June 18, 1999.

Place: Holiday Inn, 480 King Street, Alexandria, Virginia, 22314.

Status: Open 8 a.m.–8:15 a.m., June 17, 1999; Closed 8:15 a.m.–5:30 p.m., June 17, 1999; Closed 8 a.m.–5:30 p.m., June 18, 1999.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8:00–8:15 a.m. on June 17, 1999, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. telephone 304/285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11634 Filed 5–7–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0791]

Agency Emergency Processing Under OMB Review; Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of medical device manufacturers for Year 2000 compliance of their manufacturing systems. The list of the Year 2000 compliant facilities will be made available to the public via the World Wide Web.

DATES: Submit written comments on the collection of information by May 17, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. FDA is requesting certain information on the Year 2000 compliance status of medical device manufacturing processes. This information is needed immediately in order to allow the agency to: (1) Assess the impact of the Year 2000 problem on the continued availability of an adequate supply of safe and effective medical devices and medical/surgical supplies; (2) properly advise the health-care industry and the U.S. public regarding the preparedness of the medical device industry; and (3) assess the need for additional government actions to address potential supply disruptions. This information is essential to the mission of the agency. The potential existence of Year 2000 problems in the medical device industry could pose potentially serious health and safety consequences. The use of normal clearance procedures would prolong the time needed to assess Year 2000 compliance by regulated industry.

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

Title: Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 375(b)) permits the Secretary of Health and Human Services (the Secretary) to disseminate information regarding food, drugs, devices, and cosmetics in situations involving, in the opinion of the Secretary, imminent danger to health, or gross deception of the consumer. Manufacturers will be asked to provide a status on their Year 2000 readiness and will also be asked if they have contingency plans. The survey will also ask if they have tested, verified, and certified their systems. Finally, the request will ask for a single point of contact at the manufacturer to discuss information.

The manufacturer will be able to provide facsimile, electronic, or paper copy of the information to FDA for inclusion in the web site data base. Government agencies, as well as health-care facilities and the general public, will have access to the web site to be able to assess their vulnerability to Year 2000 problems and to take corrective actions, if necessary, in advance of January 1, 2000. The posting of information on compliant facilities is designed to provide health care facilities with a positive statement as to the status of compliant firms.

Respondents: Medical Device Manufacturers

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
13,500	1	13,500	13	175,500

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

FDA's mailing lists were used to estimate the number of medical device manufacturers who would be subject to this collection. FDA estimates that it will take manufacturers an average of 13 hours to collect, prepare, and submit the requested information. These estimates include allowance for variance in the number of devices to be reported by a manufacturer.

Dated: May 5, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11734 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1069]

Changes in the Procedures for Providing Public Notice of the Availability of Completed Environmental Assessments and Findings of No Significant Impact

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), is announcing changes in the procedures used for providing public notice of the availability of completed environmental assessments (EA's) and findings of no significant impact (FONSI's) for new drug applications (NDA's), abbreviated new drug applications (ANDA's), and supplemental applications.

EFFECTIVE DATE: May 10, 1999.

ADDRESSES: Copies of EA's and FONSI's are available on the Internet at ''http://www.fda.gov.cder/foi/index.htm'' or may be requested by writing the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5633.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act of 1969 (NEPA), Congress declared that it will be the continuing policy of the Federal Government to ''use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.'' (See 42 U.S.C. 4331(a).) NEPA requires all Federal agencies to include in every recommendation or report for major Federal actions significantly affecting the quality of the human environment a detailed statement assessing the environmental impact of, and alternatives to, the proposed action and to make available to the public such statements. (See 42 U.S.C. 4332 and 40 CFR 1506.6.)

FDA regulations in part 25 (21 CFR part 25) govern compliance with NEPA, as implemented by the regulations of the Council on Environmental Quality (CEQ) in 40 CFR part 1500. Under FDA regulations, actions to approve NDA's, ANDA's, and supplements to existing approvals ordinarily require the preparation of an EA. (See § 25.20(l).)

In accordance with FDA regulations, FDA must make completed EA's and FONSI's for NDA's, ANDA's, and supplements available to the public upon request in accordance with the procedures in 40 CFR 1506.6. (See § 25.51(b)(2).) The regulations at 40 CFR 1506.6 require that certain environmental documents be made available to the public under the provisions of the Freedom of Information Act (5 U.S.C. 552) and that these documents be made available to the public without charge, to the extent practicable. (See 40 CFR 1506.6(f).) This is the procedure used by CDER to provide completed EA's and FONSI's for NDA's, ANDA's, and supplements for human drugs to the public when they are requested.

Although not required by regulation, CDER has also periodically published notices in the **Federal Register** (57 FR 18887, 61 FR 49470, 62 FR 22960, 63 FR 27300) that provide a listing of EA's and FONSI's that are available for NDA's, ANDA's, and supplements. FDA is announcing that CDER will no longer publish such notices, because the environmental documents are now available on the Internet.

In 1996, FDA established the Center for Drug Evaluation and Research (CDER) Freedom of Information Office Electronic Reading Room, which can be accessed through the Internet at ''http://www.fda.gov.cder/foi/index.htm''. The electronic reading room provides a listing of applications approved by CDER and electronic copies of agency documents used to support the approval of the applications under the heading ''Drug Approval Packages.'' The agency documents include an EA and FONSI for each application unless the action was categorically excluded from the requirement to prepare an EA. (See § 25.31.)

Publication of a notice in the **Federal Register** announcing the availability of completed EA's and FONSI's for NDA's, ANDA's, and supplements duplicates the information available through the CDER Freedom of Information Office Electronic Reading Room. Therefore, to promote efficient operations, FDA will discontinue publication of such **Federal Register** notices, effective immediately.

Dated: April 30, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11583 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0611]

Determination of Regulatory Review Period for Purposes of Patent Extension; Femara®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Femara® and is publishing this notice

of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Femara® (letrozole). Femara® is indicated for the treatment of advanced breast cancer in postmenopausal women with disease progression following antiestrogen therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Femara® (U.S. Patent No. 4,978,672) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 16, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Femara® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Femara® is 2,160 days. Of this time, 1,794 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: August 28, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 28, 1991.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: July 25, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Femara® (NDA 20–726) was initially submitted on July 25, 1996.

3. *The date the application was approved*: July 25, 1997. FDA has verified the applicant's claim that NDA 20–726 was approved on July 25, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,232 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 9, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 8, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–11584 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0487]

Determination of Regulatory Review Period for Purposes of Patent Extension; Denavir™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Denavir™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory

review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Denavir™ (Penciclovir). Denavir™ is indicated for the treatment of recurrent herpes labialis (cold sores) in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Denavir™ (U.S. Patent No. 5,075,445) from Beecham Group p.l.c., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 28, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Denavir™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Denavir™ is 1,299 days. Of this time, 954 days occurred during the testing phase of the regulatory review period, 345 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: March 7, 1993. The applicant claims March 5, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 7, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: October 16, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for Denavir™ (NDA 20–629) was initially submitted on October 16, 1995.

3. *The date the application was approved*: September 24, 1996. FDA has verified the applicant's claim that NDA 20–629 was approved on September 24, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 640 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 9, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 8, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–11585 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Airline Catering Workshop on Sanitation, HACCP and the 1999 Food Code; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA), in cooperation with the International Inflight Food Service Association, is announcing the following workshop: Airline Catering Workshop on Sanitation, HACCP and the 1999 Food Code. The workshop will discuss issues on sanitation, Hazard Analysis Critical Control Point and the 1999 Food Code.

Date and Time: The workshop will be held on Wednesday, June 2, 1999, 8:30 a.m. to 5 p.m.

Location: The workshop will be held at the Marriott Hotel, 1500 Convention Center Dr., Arlington, TX 76011, 817–261–8200.

Contact: Martha S. Baldwin, Dallas District, Food and Drug Administration, 3310 Live Oak St., Dallas, TX 75204, 214–655–5310, ext. 544, FAX 214–655–5200, e-mail ''mbaldwin@ora.fda.gov''.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by May 26, 1999.

If you need special accommodations due to a disability, please contact Martha S. Baldwin at least 7 days in advance.

Dated: May 4, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11736 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0228]

Guidance for Industry: Computerized Systems Used in Clinical Trials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled

''Guidance for Industry: Computerized Systems Used in Clinical Trials.'' The guidance document provides guidance for computerized systems used to create, modify, maintain, archive, retrieve, or transmit clinical data intended for submission to FDA. Whether collected or reported electronically or in paper form, clinical data must meet certain quality standards, and this guidance is intended to provide information on how computerized systems can meet these standards.

DATES: Written comments on the guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Guidance for Industry: Computerized Systems Used in Clinical Trials'' to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs (ORA), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0425.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Computerized Systems Used in Clinical Trials.'' This guidance pertains to long-standing regulations covering clinical trial records under 21 CFR parts 300, 500, and 800. On March 20, 1997 (62 FR 13430), FDA published a regulation providing uniform, enforceable, baseline standards for electronic records and electronic signatures, codified in 21 CFR part 11. To formulate supplemental guidance on the use of computerized systems in clinical trials, an agency working group representing the Bioresearch Monitoring Program Managers from each center within FDA and the Office of Regulatory Affairs prepared a draft of this present guidance. In the **Federal Register** of June 18, 1997 (63 FR 33094), FDA published the draft guidance which allowed 60 days for public comment. Upon petition, FDA extended the comment period for an additional 60 days. FDA received more than 500 comments from 24 respondents. Over the following 12 months, the agency working group reviewed all public comments and made appropriate changes to the guidance.

This guidance document represents the agency's current thinking on computerized systems used in clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information contained in the guidance document may be applicable to all situations. The document is intended to provide useful information and does not set forth requirements.

II. Comments

Interested persons, may, at any time, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. 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. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance using the World Wide Web (WWW). For WWW access, connect to the Office of Regulatory Affairs at ''http://www.fda.gov/ora/compliance__ref/bimo/default.html''.

Dated: May 3, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11582 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0512]

''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and for the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use;''' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use.''' This guidance document is intended to assist applicants in the preparation of the content and format of the chemistry, manufacturing, and controls (CMC) section and the establishment description section of a biologics license application (BLA), revised Form FDA 356h, for human blood and blood components intended for transfusion or for further manufacture. In addition, this guidance document provides assistance for the completion of the BLA. This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiatives and the Food and Drug Administration Modernization Act of 1997 (Modernization Act), to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h,

'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use.''' This guidance document is intended to provide instructions on the completion of the revised Form FDA 356h, including CMC and establishment description sections for human blood and blood components intended for transfusion or for further manufacture. The guidance announced in this notice has been revised based on comments received on the draft guidance entitled ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use''' announced in the **Federal Register** of July 10, 1998 (63 FR 37401) and finalizes that draft document.

In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of a new harmonized Form FDA 356h entitled ''Application to Market a New Drug, Biologic, or an Antibiotic for Human Use.'' The new harmonized form is intended to be used by applicants for all drug and biological products, to include blood and blood components. Manufacturers may voluntarily begin using the form for human blood and blood components. FDA will announce in the future when manufacturers are required to use this form for all products. Use of the new harmonized form will allow biological product manufacturers to submit a single application, the BLA, instead of two separate license application submissions, a product license application (PLA) and an establishment license application (ELA).

This guidance document represents the agency's current thinking on content and format of the CMC and establishment description information sections of a license application for human blood and blood components intended for transfusion or for further manufacture. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: April 30, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11735 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Research, Purification, and Further Development of Immunosuppressive Factor(s) Released From Human Glioblastoma Cells in Culture

The National Cancer Institute's Experimental Immunology Branch has identified and characterized the activity of a soluble factor(s) produced by human glioblastoma tumor cells that suppresses T cell responses in health donor blood samples.

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a Cooperative Research and Development Agreement (CRADA) Collaborator to aid NCI in the further characterization and commercial development of the immune-suppressive factor(s) generated from glioblastoma tumor cells. The glioblastoma-generated factor(s) appear to act by causing antigen-presenting cells (APCs), such as monocytes, to undergo a change in cytokine production which induces apotosis or antigen-specific unresponsiveness (''anergy'') in T cells. NCI has partially purified and characterized the immunosuppressive factor(s). Several applications for this technology have been identified. They include (1) therapy for graft-host rejection in transplantation surgeries; (2) treatment of autoimmune diseases; and (3) suppression of severe allergic responses. NCI is looking for a CRADA Collaborator with a demonstrated record of success in protein purification and immunosuppressive therapeutics for the eventual use of this factor(s) in the clinical treatment of patients. The proposed term of the CRADA can be up to five (5) years.

DATES: Interested parties should notify this office in writing of their interest in filing a formal proposal no later than July 9, 1999. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly S. Symonds, Ph.D., Technology Development Specialist (Tel. #301–496–0477, FAX #301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) needed for participation in the CRADA opportunity should be addressed to Marlene Shinn, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056, ext. 285; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. NCI is looking for a CRADA partner to aide NCI in characterization and commercial development of the tumor cell-derived immune-suppressive factor(s). The expected duration of the CRADA would be from one (1) to five (5) years.

Cancer patients frequently demonstrate an impaired *in vitro* and *in vitro* T cell immune activity. This deficiency is often reflected in animal models and affects both tumor antigens and non-tumor antigens. Cytokine dysfunction appears to contribute to tumor-associated immune dysregulation, with decreases of IL–2 and/or IFN-gamma production and increases in IL–4, IL–5, IL–6, and/or IL–10 production. Human gliomas are frequently very immunosuppressive and provide an interesting example of tumor-associated immune dysfunction. T cells from glioma patients are impaired in their ability to respond *in vitro* to antigens and to T cell mitogens by proliferation and IL–2 production. *In vitro* and clinical findings suggest that one or more factors released into the glioma culture supernatant (GCS) elicit immunoregulatory effects on systematic cellular immunity.

To test this hypothesis, NCI scientist investigated whether GCS would affect monocyte-generated cytokines and T cells from healthy donors of human peripheral blood mononuclear cells (PBMCs). Incubation of PBMC with GCS decreased production of IL–12, IFN-gamma, and TNF-alpha, and increased production of IL–6 and IL–10. The GCS-induced underproduction of IL–12 and overproduction of IL–10 in monocytes was correlated with a decrease in IL–12 p40 and an increase in IL–10 mRNA expression. Incubation with GCS also resulted in reduced expression of MHC class II and CD80/86 costimulatory molecules on monocytes. Experiments using exogenous IL–6, TGF-beta-1, TGF-beta-2, or CDGP, either singly or in combination, did not elicit the changes in with IL–12 or IL–10 production.

NCI scientists have shown that the immunosuppressive effects found in GCS are due to a factor(s) that is resistant to extremes in pH, differentially susceptible to temperature, susceptible to trypsin, and has a minimum molecular mass of 40 kDa. NCI scientists have also demonstrated that the glioblastoma factor(s) alter the cytokine profiles of monocytic APC(s) that, in turn, inhibit T cell function. Thus, the scientists have shown that monocytes can serve as an intermediate between tumor-generated immune-suppressive factors and the T cell responses that are suppressed in glomas. NCI scientists are currently exploring the possibility that T cells that recognize antigens presented on treated monocytes will undergo apoptosis or anergy, while T cells that do not recognize those antigens will retain their normal activities.

NCI predicts that the therapeutic use of the glioblastoma-generated immunosuppressive factor(s), once fully characterized and purified, will be applicable to a wide variety of fields. For example, there is a great need for immunosuppressive therapy following transplantation surgeries. A major challenge of tissue transplantation is to selectively deplete the immune system of responses against antigens found on the surface of grafted foreign tissue without concomitantly compromising immunity to antigens of infectious agents or tumors. At present, the standard approach is to continuously treat the transplant recipient with immunosuppressive drugs that are non-specific rendering the patient susceptible to opportunistic infections and/or cancer. By treating transplant recipients with donor antigen-presenting cells (APCs) that have been incubated ex vivo with glioblastoma culture supernatant (GCS), the recipient may be able to be depleted of all donor-specific T lymphocytes that are responsible for initiating graft rejection while at the same time maintaining immune integrity.

Immunnosuppressive drugs are also used to treat autoimmune diseases in which the autoantigen is known. Thus, it may be possible to delete autoimmune-specific T cells by treating the patient with autologous antigen-presenting cells that have been incubated with GCS and pulsed with the antoantigen *ex vivo.* Such an approach may eliminate the need for, or reduce the use of, immunosuppressive drugs in both tissue transplantation and autoimmune diseases.

The described methods are the subject of a U.S. provisional patent application filed on March 24, 1999 by the Public Health Service on behalf of the Federal Government. Furthermore, the initial report and characterization of the invention is described in: Zou et al, Journal of Immunology, vol. 162: 4882–4892 (1999).

Under the present proposal, the goal of the CRADA will be to enhance the development of the GCS-generated immunosuppressive factor(s) in the following areas:

1. Further purification and characterization of the factor(s).
2. Examination of the ability of the purified immunosuppressive factor to induce apoptosis or anergy in T cells through a monocyte intermediate using *in vitro* and *in vivo* models.

Party Contributions

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the CRADA Collaborator with information and data relating to the glioblastoma-generated immunosuppressive factor(s).
3. Planning research studies and interpreting research results.
4. Carrying out research to validate the immunosuppressive activities of the GCS-generated factor(s).
5. Publishing research results.
6. Developing additional potential applications of the factor(s).

The role of the CRADA Collaborator may include, but not limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
4. Publishing research results.

Selecting criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. A demonstrated record of success in the areas of protein purification, characterization and therapeutic development.
2. A demonstrated background and expertise in immunological sciences.

3. The ability to collaborate with NCI on further research and development of this technology. This ability will be demonstrated through expertise and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

4. The demonstration of adequate resources to perform the research and development of this technology (e.g., facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

5. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

6. The demonstration of expertise in the commercial development and production of products related to this area of technology.

7. The Level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: April 30, 1999.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–11658 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

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 invention listed below is owned by an agency of the U.S. Government and is 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.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J.R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: .

Title: "Monoclonal Antibodies Specific for Human Thymidylate Synthase"—Prognosticator of Breast and Colorectal Cancer Survival

Inventors: Drs. Patrick G. Johnston (NCI), Carmen J. Allegra (NCI), Bruce A. Chabner (NCI) and Chi-Ming Liang (NCI).

DHHS Ref. No.: E–137–90/0 [= USPA SN: 07/690,841—Filed April 24, 1991].

The fluoropyrimidines are an important group of antineoplastic agents that are widely used in the treatment of gastrointestinal tumors, breast tumors, and epithelial tumors of the upper aerodigestive tract. Thymidylate synthase (''TS'') catalyzes the methylation of deoxyurdine monophasphate (''dUMP'') to deoxythymidine monphosphate (''dTMP''). The de novo synthesis of dTMP is an essential step in the synthesis of pyrimidine nucleotides and DNA biosynthesis. Thymidylate synthase (''TS'') enzyme inhibition is one of the main biochemical events underlying the antineoplastic action of the fluropyrimidines 5-fluorouracil (''5-FU'') and fluorodeoxyuridine (''FudR'').

The clinical importance of Thymidylate synthase (''TS'') has been noted by several investigators who have demonstrated *in vivo* as well as *in vitro* that TS enzyme levels in neoplastic cells rise rapidly when cells are exposed to 5-fluorouracil. Thus, the ability of a tumor to acutely over express the TS enzyme may play a key role in the development of tumor resistance and may represent an important protective mechanism in response to this drug.

The quantitation and detection of TS in human tissues has traditionally been performed by enzymatic biochemical assays that either measure catalytic activity or measure the amount of radiolabeled FdUMP binding to TS following extraction of the enzyme from cells and tissue. These assays have several limitations when applied to the measurement of TS activity in human tissue samples. While the assays have the required sensitivity for quantitating enzyme *in vitro* malignant cells in culture, they lack adequate sensitivity to measure the lower levels of enzyme activity in human tumors. Recently, monoclonal antibodies have been developed to human thymidylate synthase that have the required sensitivity and specificity to detect and quantitate thymidylate synthase enzyme in formalin-fixed tissue sections. These monoclonal antibodies to TS provide a method for determining the prognosis of a patient afflicted with breast cancer or with primary colorectal cancer by measuring the level of TS expression in biopsy tissue samples by using these antibodies specific to thymidylate synthase.

These monoclonal antibodies further provide a method for predicting the benefit of chemotherapy for a patient afflicted with breast cancer. The aforementioned methodology is derived from the discovery that high thymidylate synthase expression is associated with a poor prognosis in node-positive, but not in node-negative breast cancer patients. Further, with some 2,500 patients, thymidylate synthase expression was not found to be correlated with other prognostic factors including tumor size, ER status, PR Status, tumor grade, vessel invasion, and histology.

The expression of TS is also an important independent prognosticator of disease-free survival and overall survival in patients with colorectal cancer. In a study of the prognostic importance of the level of thymidylate synthase (''TS'') expression in patients with primary colorectal cancer, the level of TS expression in the primary rectal cancers of 294 of 801 patients was immunohistochemically assessed with the TS–106 monoclonal antibodies. Forty-nine percent of patients whose tumors had low TS levels were disease free at 5 years compared with 27% of patients with high levels of TS. Moreover, 60% of patients with low TS

levels were alive after 5 years compared with 40% of patients with high TS levels. The level of TS expression remained prognostic for both disease-free survival and survival independent of the stage of disease and other pathologic characteristics evaluated.

The present invention relates to monoclonal antibodies that are specific for the protein thymidylate synthase, and TS–106 hybridoma producing these monoclonal antibodies. The invention further relates to methods of detection and diagnostic kits to test for the presence of thymidylate synthase.

The above mentioned invention is available for licensing, including any foreign intellectual property rights, on an exclusive or non-exclusive basis.

Dated: April 29, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–11659 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(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: May 11, 1999.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

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: May 14, 1999.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

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: May 14, 1999.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

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: May 14, 1999.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

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 May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11650 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 Governors of the Warren Grant Magnuson Clinical Center.

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 in accordance with the provisions set forth in section 552b(b)(6), Title 5 U.S.C., as amended for discussion of personnel qualifications and performance, the disclosure of which, would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clincal Center.

Date: June 4, 1999.

Open: 9:00 a.m. to 12:00 p.m.

Agenda: Discussion of the Clinical Center budget, organizational planning, and operations.

Place: National Institute of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate the self assessment survey of the Board.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maggi Stakem, Office of the Director, National Institutes of Health, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, 9000 Rockville Pike, Bethesda, MD 20892, 301/496–4114.

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11655 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, 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.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.
Date: May 11, 1999.
Time: 3:00 p.m. to 4:30 p.m.
Agenda: Concept review.
Place: National Institutes of Health, National Cancer Institute, Building 31, Room 10A06, Bethesda, MD 20892–2580, (Telephone Conference Call).
Contact Person: Eleanor Nealon, Director, Office of Liaison Activities, Building 31—Room 10A16, 9000 Rockville Pike, Rockville, MD 20892, 301/594–3194.

This notice is being published less than 15 days prior to the meeting due to the unexpected need to review these specific report recommendations.

(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: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11654 Filed 5–7–99; 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 concerning 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, Comparative Medicine.
Date: June 10, 1999.
Time: 8:00 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Park International Hotel, 11410 Rockville Pike, Rockville, MD 20850.
Contact Person: John D. Harding, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(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: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11656 Filed 5–7–99; 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 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 meting 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 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 Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.
Date: June 8–9, 1999.
Open: June 8, 1999, 8:00 a.m. to 9:30 a.m.
Agenda: To discuss program planning and program accomplishments.
Place: Park International Hotel, 11410 Rockville Pike, Rockville, MD 20850.
Closed: June 8, 1999, 9:30 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Park International Hotel, 11410 Rockville Pike, Rockville, MD 20850.
Contact Person: Raymond O'Neill, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(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: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11657 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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), 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 General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Committee C.
Date: June 16, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arthur L. Zachary, PHD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11649 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 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 Institute of Allergy and Infectious Diseases Special Emphasis Panel, Sexually Transmitted Diseases Prevention—Primate Unit.

Date: May 21, 1999.

Time: 9:00 AM to 12:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.

Contact Person: Anna Ramsey-Ewing, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C37, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8536.

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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11651 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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), 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 General Medical Sciences Special Emphasis Panel.

Date: May 5, 1999.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, Room 2AS–43J, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter C. Preusch, Health Scientist Administrator, Div. of Pharmacology, Physiology, and Biologic Chem, National Institute of General Medical Sciences, Natcher Building, Room 2AS–43J, Bethesda, MD 20892, (301) 594–5938.

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. 93.375, Minority Biomedical Research Support; 93.821, Cell biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11652 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 10–11, 1999.

Time: June 10, 1999, 7:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William A. Kachadorian, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2c212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: June 14–16, 1999.

Time: June 14, 1999, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place; Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, SRA, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11653 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number: TE 011301.

Applicant: WDH Ecological Services, Benton, Kentucky (William D. Hendricks, P.I.).

The applicant requests a permit to take (capture and release, radio-telemetry) the following endangered bat species: Ozark big-eared bat (*Corynorhinus (=Plecotus) townsendii ingens*), Virginia big-eared bat (*Corynorhinus (=Plecotus) townsendii virginianus*), Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Mexican long-nosed bat (*Leptonycteris nivalis*), and Sanborn's long nosed bat (*Leptonycteris curasoae (=sanborni) yerbabuenae*). Applicant requests authority to conduct activities in the states of Arkansas, Alabama, California, Illinois, Indiana, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and West Virginia. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number: TE 842849.

Applicant: Davey Resource Group, Kent, Ohio (Michael Johnson, P.I.).

Applicant requests an amendment to permit number TE 842849 to expand scope of authorized activities. Permit currently authorizes take (capture and release, radio-telemetry) of Indiana bat (*Myotis sodalis*) in Ohio; applicant requests additional Ohio sites and Greenup County, Kentucky, site be added as authorized locations for permitted activities. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 3, 1999.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–11728 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Elk Valley Rancheria Liquor Licensing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that the Elk Valley Rancheria Liquor Licensing Ordinance was duly adopted and certified by Resolution No. 97–16 of the Elk Valley Tribal Council on July 9, 1997. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Susanville Indian Rancheria, under the jurisdiction of the Susanville Indian Rancheria, and is in conformity with the laws of the State of California.

DATES: This ordinance is effective as of May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Jim James, Office of Tribal Services, Division of Tribal Government Services, 1849 C Street, NW, MS 4631 MIB, Washington, DC 20240–4401; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Elk Valley Rancheria Liquor Licensing Ordinance is to read as follows:

Elk Valley Rancheria Liquor Licensing Ordinance

An Ordinance of the Tribal Council of the Elk Valley Rancheria Regulating the sale, distribution and control of alcoholic beverages on the Elk Valley Rancheria.

Chapter 1. General Provisions

Section 1.1 *Declaration of findings.* The Tribal Council of the Elk Valley Rancheria hereby finds as follows:

A. Under the Constitution of the Tribe, Article V, Section 1(1), the Tribal Council is charged with the duty of protecting the safety and welfare of the Elk Valley Rancheria.

B. The Introduction, possession and sale of alcoholic beverages on the Elk Valley Rancheria is a matter of special concern to the tribe.

C. Federal law leaves to Tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted on Indian reservations.

D. Present day circumstances make a complete ban on alcoholic beverages within the Elk Valley Rancheria ineffective and unrealistic. At the same time, a need still exists for strict Tribal regulation and control over alcoholic beverage distribution.

E. The enactment of an Ordinance governing alcoholic beverage sales on the Elk Valley Rancheria and providing for the purchase and sale of alcoholic beverages through Tribally licensed outlets will increase the ability of the Tribal government to control the distribution, sale, and possession of liquor on the Elk Valley Rancheria, and at the same time will provide an important and urgently needed source of revenue for the continued operation of the Tribal government and delivery of Tribal governmental services.

Section 1.2 *Declaration of Policy.* Under the inherent sovereignty of the Tribe, the Elk Valley Rancheria Liquor Licensing Ordinance shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the sale and possession of alcoholic beverages affects the public interest of the people, and should be regulated to the extent of prohibiting all sale and possession of acholic beverages, except as provided in this Ordinance. In order to provide for Tribal control over liquor sales and possession within the Reservation, and to provide a source of revenue for the continued operation of the Tribal government and the delivery of Tribal governmental services, the Tribal Council promulgates this Ordinance.

Section 1.3 *Repeal of Prior Liquor Ordinances.* To the extent not previously repealed, either expressly or by implication, any prior Liquor

Ordinance remaining in effect is hereby expressly repealed.

Section 1.4 *Short Title.* This Ordinance shall be known and cited as the ''Elk Valley Rancheria Liquor Licensing Ordinance.''

Section 1.5 *Purpose.* The purpose of this Ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Elk Valley Rancheria, except pursuant to a license issued by the Tribal Council under the provisions of this Ordinance.

Section 1.6 *Sovereign Immunity preserved.* Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Elk Valley Rancheria. No officer or employee of the Elk Valley Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has express, specific written authorization from the Tribal Council.

Section 1.7 *Applicability within the Reservation.* This Ordinance shall apply to all persons within the exterior boundaries of the Elk Valley Rancheria consistent with the applicable federal Indian liquor laws.

Section 1.8 *Interpretation and Findings.* The Tribal Council, in the first instance, may interpret any ambiguities contained in this Ordinance.

Section 1.9 *Application of 18 U.S.C. 1161.* The importation, manufacture, distribution and sale of alcoholic beverages on the Elk Valley Rancheria shall be in conformity with this Ordinance and in conformity with the laws of the State of California as that phrase or term is used in 18 U.S.C. 1161.

Section 1.10 *Severability.* If any part or provision of this Ordinance or the application thereof to any persons or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this Ordinance are severable.

Section 1.11 *Effective Date.* This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Chapter 2. Definitions

Section 2.1 *Interpretation.* In construing the provisions of this Ordinance, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

Section 2.2 *Alcohol.* ''Alcohol'' means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Section 2.3 *Alcoholic Beverage.* ''Alcoholic beverage'' includes all alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits wine or beer, and which contains one half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall be interchangeable in this Ordinance with the term ''liquor'.

Section 2.4 *Beer.* ''Beer'' means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake, otherwise known as Japanese rice wine.

Section 2.5 *Tribal Council.* ''Tribal Council'' means the governing body of the Elk Valley Rancheria as provided for under article IV, Sect. 1 of the Tribal Constitution.

Section 2.6 *Distilled Spirits.* ''Distilled spirits'' means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

Section 2.7 *Importer.* ''Importer'' means any person who introduces alcohol or alcoholic beverages into the Elk Valley Rancheria from outside the exterior boundaries thereof for the purpose of sale or distribution within the Rancheria, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

Section 2.8 *Liquor License.* ''Liquor license'' means a license issued by the Tribal Council under the provision of this Ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within the Rancheria, consistent with federal law.

Section 2.9 *Manufacturer.* ''Manufacturer'' means any persons engaged in the manufacture of alcohol or alcoholic beverages.

Section 2.10 *Person.* ''Person'' means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group, whether recognized by the United States Government or otherwise. The term shall also include the business enterprises of the Tribe. It shall be interchangeable in the Ordinance with the term ''seller'' or ''licensee.''

Section 2.11 *Rancheria.* ''Rancheria'' means all lands within the exterior boundaries of the Elk Valley Rancheria and such other lands as may hereafter be acquired by the Tribe, whether within or without said boundaries, under any grant, transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

Section 2.12 *Sale.* ''Sale'' means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacturer, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order. The term ''sale'' shall also specifically include the transfer of alcoholic beverages from one person to another pursuant to a complimentary or free beverage policy, promotion, plan, or scheme of the seller.

Section 2.13 *Seller.* ''Seller'' means any person who, while within the exterior boundaries of the Rancheria, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

Section 2.14 *Wine.* ''Wine'' means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

Chapter 3. Prohibition of the Unlicensed Sale of Liquor

Section 3.1 *Prohibition of the Unlicensed Sale of Liquor.* No person shall import for sale, manufacture,

distribute or sell alcoholic beverages within the Reservation without first applying for and obtaining a written license from the Tribal Council issued in accordance with the provisions of this Ordinance.

Section 3.2 *Authorization to Sell Liquor.* Any person for and obtaining a liquor license under the provisions of this Ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

Section 3.3 *Types of Licenses.* The Tribal Council shall have the authority to issue the following types of liquor licenses within the Reservation:

A. ''Retail on-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. ''Retail on-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.

C. ''Retail off-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.

D. ''Retail off-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.

E. ''Manufacturers license'' means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the Rancheria.

Chapter 4. Applications for Licenses

Section 4.1 *Application Form and Content.* An application for licensing under this Ordinance shall be made to the Tribal Council and shall contain the following information:

A. The name and address of the applicant. In the case of a corporation, the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership, the name and address of each partner.

B. The specific area, location and/or premises for which the license is applied for.

C. The type of liquor license applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a California state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner. In the case of a corporation, the signature and fingerprint of each of the officers of the corporation under the seal of the corporation. In the case of a tribal business enterprise, the signature and fingerprint of the officers of the enterprise or any persons maintaining day-to-day control and management of the enterprise, whichever is applicable.

G. The application shall be verified under oath, notarized and accompanied by the license fee required by this Ordinance.

Section 4.2 *Fee Accompany Application.* The Tribal Council shall by resolution establish a fee schedule for the issuance, renewal and transfer of the following types of licenses:

A. Retail on-sale general license;

B. Retail on-sale beer and wine license;

C. Retail off-sale general license;

D. Retail off-sale beer and wine license; and E. Manufacturers license.

Section 4.3 *Investigation.* Upon receipt of an application for the issuance, transfer or renewal of a license and the application fee required herein, the Tribal Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of the Ordinance have been complied with, and shall investigate all matters connected therewith which may affect the health, safety and welfare of the Tribe.

Section 4.4 *Denial of Application.* An application shall not be denied, except for good cause. However, the Tribal Council shall deny an application for issuance, renewal, or transfer of a license if either the applicant or the proposed premises:

A. has not complied with application procedures;

B. does not meet application requirements;

C. would tend to create a law enforcement problem;

D. obtained a license on the basis of false, misleading , or misrepresented information; or

E. fails to qualify for the issuance of findings of the Tribal required by Section 5.2 of this Ordinance.

Chapter 5. Issuance, Renewal and Transfer of Licenses

Section 5.1 *Public Hearing.* Upon receipt of proper application for issuance, renewal or transfer of a license, and the payment of all fees required under this Ordinance, the Secretary of the Tribal Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least ten calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Rancheria. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Tribal Council shall hear from any person who wishes to speak for or against the application. The Tribal Council shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

Section 5.2 *Tribal Council Action on the Application.* Within thirty (30) days of the conclusion of the public hearing, the Tribal Council shall act on the matter. The Tribal Council shall have the authority to deny, approve, or approve with conditions the application. Before approving the application, the Tribal Council shall find: (1) that the applicant has met all procedural requirements of the application process; (2) that investigation of the application has not produced any information that would disqualify the applicant from obtaining a license under this Ordinance; (3) that the site for the proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses; and (4) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Ordinance.

Upon approval of an application the Tribal Council shall issue a license to the applicant in a form to be approved from time to time by the Tribal Council by resolution. All businesses shall post their Tribal liquor license issued under the Ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

Section 5.3 *Multiple Locations.* Each license shall be issued to a specific person. Separate license shall be issued for each of the premises of any business

establishment having more than one location.

Section 5.4 *Term of License.* Temporary license. All licenses issued by the Tribal Council shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Tribal Council may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering or similar occasion at a fee to be established by the Tribal Council by resolution.

Section 5.5 *Transfer of Licenses.* Each license issued or renewed under this Ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Tribal Council. The Tribal Council shall have the authority to approve, deny or approve with conditions any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 4.1 of this Ordinance. In the case of a transfer to a new location, the application shall contain an exact description of the location where the alcoholic beverages are proposed to be sold.

Chapter 6. Revocation of Licenses

Section 6.1 *Revocation of License.* The Tribal Council shall revoke a license upon any of the following grounds:

A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal thereof.

B. The violation of any condition imposed by the Tribal Council on the issuance, transfer, or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal Ordinance.

E. The failure to take reasonable steps to correct objectionable conditions on the licenses premises or any immediate adjacent area leased, assigned or rented by the licensee constituting a nuisance within a reasonable time after receipt of a notice to make such corrections has been received from the Tribal Council or its authorized representative.

Section 6.2 *Accusations.* The Tribal Council on its own motion, through the adoption of an appropriate resolution meeting the requirements of this Section, or any person, may initiate revocation proceedings by filing an accusation with the Secretary of the Tribal Council. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this Ordinance which would authorize the Tribal Council to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of any accusation which meets the foregoing requirements, the Secretary shall cause the matter to be set for hearing before the Tribal Council. Thirty days prior to the date set for the hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Tribal Council. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten days prior to the hearing date.

Section 6.3 *Hearing.* Any hearing held on any accusation shall be held before a quorum of the Tribal Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tribal Council. The Tribal Council shall render its decision within 60 days after the date of the hearing. The decision of the Tribal Council shall be final and non-appealable.

Chapter 7. Enforcement

Section 7.1 *General Penalties.* Any person adjudged to be in violation of this Ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars ($500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed in conformity with federal law by separate Chapter, or provision of this Ordinance or by a separate Ordinance adopted by the Tribal Council.

Section 7.2 *Initiation of Action.* Any violation of this Ordinance shall constitute a public nuisance. The Tribal Council may initiate and maintain an action in tribal court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this Section shall be in addition to any other penalties provided for this Ordinance.

Dated: April 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11593 Filed 5–6–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Taos Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 99–04, enacting the Liquor Ordinance of the Pueblo of Taos was duly adopted by the Pueblo of Taos on February 25, 1999. The Ordinance provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Pueblo of Taos lands under the jurisdiction of the Pueblo of Taos, the provisions for criminal jurisdiction to be exercised in accordance with applicable Federal case law, statutes, and regulations.

DATES: This Ordinance is effective as of May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Division of Tribal Government Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Liquor Ordinance of the Pueblo of Taos is to read as follows:

Taos Pueblo Liquor Ordinance

Section 1. Introduction

A. *Title.* The title of this ordinance shall be the Taos Pueblo Liquor Ordinance.

B. *Authority.* This Ordinance is enacted in accordance with the inherent governmental powers of the Taos Pueblo, whose traditional law

empowers its Tribal Council to enact ordinances. This Ordinance is in conformance with the laws of New Mexico, as required in 18 U.S.C. 1161.

Section 2. Definitions

A. ''Alcoholic beverage'' or ''Liquor'' includes the four varieties of liquor commonly referred to as alcohol, spirits, wine, and beer, and all fermented, spirituous, vinous or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor, or any otherwise intoxicating liquid, including every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine, or beer and intended for oral consumption.

B. ''Governor'' means the Governor of the Taos Pueblo or his designee.

C. ''Licensed Establishment'' means a location on Taos Pueblo Lands designated by the Taos Pueblo Tribal Council as a licensed establishment for the purpose of selling alcoholic beverages. Designation by the Tribal Council must show the location of the land and building of the establishment, by map and general description.

D. ''Minor'' means any person under the age of twenty-one (21) years.

E. ''Person'' means a natural person, corporation, firm, partnership, joint venture, association, or other entity, including, but not limited to, the Pueblo and an agency of the Pueblo.

F. ''Pueblo'' means the Taos Pueblo, a federally-recognized tribe of Indians, located within the exterior boundaries of the State of New Mexico.

G. ''Taos Pueblo Lands'' means lands owned by the Pueblo within the exterior boundaries of Taos Pueblo's Grant, its Tenorio Tract, Karavas Tract, or Tracts A, B, or C, including any lands which may in the future lawfully come within the ownership and jurisdiction of the Pueblo.

Section 3. Purposes

A. Tribal Council Control of Location of Sales

Taos Pueblo has decided to open certain limited locations within its jurisdiction to the possession, consumption and sale of alcoholic beverages by enacting this Ordinance adopted pursuant to 18 U.S.C. 1161. The locations which are open to the sale, possession, and consumption of alcoholic beverages shall be only commercial establishments in which the Pueblo owns a controlling interest, which are located on Taos Pueblo Lands and which are Licensed Establishments. No licensed establishment shall be located closer than 500 feet from any church, school, or military installation. A licensed establishment will be specifically designated so as to permit sales either by the package or by the drink, provided that any convenience store shall be open only to sale and possession, but not consumption, of alcoholic beverages.

B. Control of Sales and Distribution; Provision of Tribal Revenue

This Ordinance shall govern all sales and distribution of alcoholic beverages on Taos Pueblo Lands and will allow the licensing of liquor establishments and the granting of liquor permits to persons to provide an additional source of revenue for tribal operations.

C. Goals of Regulation

Pueblo regulation of the sale, possession, and consumption of liquor on Taos Pueblo Lands is necessary to protect the health, security, and general welfare of the Pueblo, and to address tribal concerns relating to alcohol use. To further these goals and provide an additional source of governmental revenue, the Pueblo has adopted this Ordinance, which shall be liberally construed to fulfill the purposes for which it has been adopted.

Section 4. Sales, Purchases, Distribution, Possession, Consumption

A. Authorization

Persons are hereby authorized to introduce, sell, dispense, purchase, distribute, warehouse, possess and consume alcoholic beverages at Licensed Establishments on Taos Pueblo Lands in accordance with the laws of the State of New Mexico, provided, however, that any person who sells alcoholic beverages on Taos Pueblo Lands must first obtain a tribal liquor permit from the Tribal Council or be employed by the holder of such a permit.

B. Tribal Liquor Licenses for Establishments

Each tribal liquor license for an establishment shall set forth the location and description of the building and premises for which the license is issued and shall define by map and general description the area of the Licensed Establishment within which the holder of a tribal liquor permit may sell alcoholic beverages.

C. Tribal Liquor Permits

1. In General. A tribal liquor permit shall authorize the holder thereof and its employees to sell alcoholic beverages at retail in cans, bottles or any other package for one year within a strictly defined area which shall be the Licensed Establishment; provided, however, that a tribal liquor permit shall be valid only if the holder thereof and its employees who sell, serve or dispense liquor are in compliance with the laws of any other jurisdiction which may have authority with regard to liquor sales and regulation on Taos Pueblo Lands, and provided further, that the liquor business conducted at the Licensed Establishment shall be conducted by the permittee or its employees directly, and shall not be conducted by any lessee, sublessee, assignee or other transferee.

2. Permit Procedure. a. Only persons authorized by the Taos Pueblo Tribal Council may be granted a permit to sell intoxicating beverages.

b. A person applying for a permit must furnish to the Governor a completed application for a tribal liquor permit. If the applicant is an entity other than a natural person, the application shall provide the required information with respect to each member of its governing board, any individual who owns or controls a financial interest of more than ten percent in such entity, and any individual who manages the liquor business. Such application must contain, among other things, the following information:

(i) An exhaustive listing of all jobs, businesses, and other employment for the immediately preceding ten years;

(ii) A listing of all residences for the immediately preceding ten years, including street address, city, and state, and dates of residence at each different location;

(iii) A list of every liquor license or permit, by number and state, in which the applicant has directly or indirectly owned or had any interest;

(iv) Detail with respect to past criminal activity, including conviction for any felony, conviction for any misdemeanors, and conviction for a violation of any federal or state liquor control act in any calendar year, except that traffic offenses need not be listed; and

(v) Detail as to whether the applicant ever applied for a liquor license or permit from any government entity and was denied and the reasons for any denial.

c. The applicant shall provide two complete sets of fingerprints on a form designated; and the costs associated with supplying the complete sets and the investigation thereafter will be borne exclusively by the applicant.

d. The applicant must give his/her consent that the fingerprints may be processed by local and national law enforcement agencies and all other available agencies. If the search, by

virtue of the fingerprint submission, reveals any adverse information which was not shown by the applicant on the application, the applicant will be given an opportunity to explain the circumstance of such omission or challenge the authenticity of the revealed information.

F. Granting, Denial, Termination or Revocation of Licenses and Permits

The granting, denial, termination, or revocation of a license for an establishment or a permit to an applicant will be within the discretion of the Taos Pueblo Tribal Council. The Governor, after reviewing the application and making appropriate inquiry, will make a recommendation to the Tribal Council. The following classes of persons shall be prohibited from being granted a permit to sell or serve intoxicating beverages:

1. Any person convicted of a felony; and
2. A minor.

Revocation of a liquor license or liquor permit will occur only following an opportunity to be heard. Any holder of a tribal liquor permit who is found, after notice and hearing, to have violated this Ordinance or to have provided false information on his/her application, shall have his/her tribal liquor permit revoked and shall be ineligible to apply for a new tribal liquor permit for three months after the date of the revocation.

Section 5. Prohibited Sales and Practices

No holder of a tribal liquor permit and none of its employees may:

A. Sell, serve, or dispense intoxicating beverages to any person who is obviously intoxicated;

B. Award alcoholic beverages as prizes;

C. Sell alcoholic beverages at a drive-up or walk-up window;

D. Sell alcoholic beverages to a minor who has not attained the age of 21;

E. Knowingly sell alcoholic beverages to an adult purchasing such liquor on behalf of a minor or an intoxicated person; and

F. Allow a person to bring alcoholic beverages onto the premises of a Licensed Establishment for the purposes of consuming them himself/herself or providing them to other individuals.

Section 6. Criminal Penalties

A. Penalties

Any person guilty of a violation of this Ordinance shall be liable upon conviction for up to 90 days confinement and/or fine of $500 for each violation, plus costs.

B. Limitations

1. Indian Civil Rights Act

Notwithstanding any other provision of this Ordinance, no penalty may be imposed pursuant or related to this Ordinance in contravention of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. 1301 *et seq.* (''ICRA'') or other applicable Federal law.

2. Violations by Non-Indians

Nothing in this Ordinance shall be construed to authorize the criminal trial or punishment by the Tribal Court of any non-Indian except the extent allowed under Federal law. When any provision of this Ordinance is violated by a non-Indian, he/she shall be referred to state and/or Federal authorities for prosecution under applicable law. It is the intent of the Pueblo that any non-Indian referred to state and/or Federal authorities be prosecuted to the full extent of applicable law. In addition, any non-Indian, upon committing any violation of the Ordinance, may be subject to a civil action for trespass, and upon having been determined by the Tribal Court to have committed the violation, shall be found to have trespassed upon Taos Pueblo Lands and shall be assessed such damages as the Court deems appropriate.

Section 7. Rules and Regulations

The Tribal Council may adopt and enforce rules and regulations to implement this Ordinance. The rules and regulations will be in conformance with New Mexico state law, if applicable, and with this Ordinance.

Section 8. Citations; Enforcement

Citations for violations of any provision of this Ordinance or rules or regulations promulgated hereunder may be issued by an officer of the Taos Pueblo police department or any person authorized by the Governor.

Section 9. Repeal of Prior Inconsistent Enactments by Tribal Council

This Ordinance repeals all prior enactments of the Taos Pueblo Tribal Council which are inconsistent with the provisions of this Ordinance. This repeal shall be effective on the date of publication of this Ordinance in the **Federal Register**.

Section 10. Severability

In the event any provision of this Ordinance or its application to any particular activity is held to be invalid or illegal by a court of competent jurisdiction, the remaining provisions and the remaining applications of such provision shall remain in full force and effect.

Section 11. Sovereign Immunity

The sovereign immunity of the Taos Pueblo is not waived by this Ordinance.

Section 12. Amendments

This Ordinance may be amended only by majority vote of the Tribal Council.

Section 13. Effective Date

This Ordinance shall be effective as a matter of tribal law as of the date of its adoption by the Tribal Council, and effective as a matter of federal law on such date as the Secretary of the Interior certifies and publishes the same in the **Federal Register**.

Dated: April 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11594 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to adjust the electric power rates for operation and maintenance of the Mission Valley Power (MVP), the Confederated Salish and Kootenai Tribal entity operating the power facility of the Flathead Irrigation and Power Project of the Flathead Reservation under a Public Law 93–638 contract.

DATES: Comments must be submitted on or before June 9, 1999.

ADDRESSES: Written comments on rate adjustments should be sent to Assistant Secretary—Indian Affairs, Attn: Branch of Irrigation and Power, MS–4513–MIB, Code 210, 1849 ''C'' Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Stan Speaks, Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or General Manager, Mission Valley Power, P. O. Box 1269, Polson, Montana 59860–1269, telephone (406) 883–5361.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C.

385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

The Montana Power Company (MPC) raised its wholesale rates effective September 5, 1997, and September 5, 1998, based on adjustments in the Consumer Price Index. At the present time MPC supplies a portion of MVP's wholesale power requirements through a contract that will expire in the year 2015. Accordingly, the BIA is proposing to adjust the rates at the recommendation of MVP to reflect the adjusted cost of service and power provided to MVP by MPC. The impact of the wholesale rate change is indicated in the previous table. The planned effective date of the proposed rate adjustment will be June 1, 1999.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this proposed rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This proposed rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Executive Order 12630

The Department has determined that this proposed rate adjustment does not have significant ''takings'' implications.

Executive Order 12612

The Department has determined that this proposed rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this proposed rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This proposed rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This proposed rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Rate Adjustment

The following table illustrates the impact of the proposed rate adjustment:

POWER RATE ADJUSTMENT

Rate class	Present rate	Proposed rate
Residential:		
Basic Rate	$5.00/mo	Unchanged.
Energy Rate	0.04725/kwh	$0.04739/kwh.
Minimum Monthly Bill	10.00/mo—May 1–October 31	Unchanged.
	20.00/mo—November 1–April 30	Unchanged.
Small Commercial (without demand):		
Basic Rate	5.00/mo	Unchanged.
Energy Rate	0.05495/kwh	0.05509/kwh.
Small Commercial with Demand:		
Basic Rate:		
Single Phase	20.00/mo	Unchanged.
Three Phase	40.00/mo	Unchanged.
Demand Rate	4.50/kw	Unchanged.
Energy Rate	0.04050/kwh	0.04064/kwh.
Large Commercial with Demand:		
Basic Rate	125.00/mo	Unchanged.
Demand Rate	5.00/KW	Unchanged.
Energy Rate	0.03115/kwh	0.03129/kwh.
Irrigation:		
Horsepower Rate	11.05/hp	Unchanged.
Energy Rate	0.03572/kwh	0.03586/kwh.
Minimum Seasonal Rate	132.00 or 6.00/hp whichever is greater	Unchanged.
Area Lights Installed on Existing Pole or Structure:	Monthly Rate	Monthly Rate
7,000 lumen unit, M.V.*	6.85	$6.87.
20,000 lumen unit, M.V.*	9.80	9.82.
9,000 lumen unit, H.P.S	6.35	6.36.
22,000 lumen unit, H.P.S	8.58	8.60.
*Continuing Service Only		
Area Lights Installed with New Pole:		
7,000 lumen unit, M.V.*	$8.60	$8.62.
20,000 lumen unit, M.V.*	11.25	11.28.
9,000 lumen unit, H.P.S	8.10	8.12.
22,000 lumen unit, H.P.S	10.30	10.32.
*Continuing Service Only		
Street Lighting (Metered):		
Basic Rate	5.00/mo	Unchanged.

POWER RATE ADJUSTMENT—Continued

Rate class	Present rate	Proposed rate
Energy Rate	0.05495/kwh)	Unchanged.
Street Lighting (Unmetered):	This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP and is unchanged as part of this rate adjustment.	Unchanged.

Dated: April 29, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11581 Filed 5–7–99; 845 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–01; NMNM–102308]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw 8,470.59 acres of Federal surface and minerals and 480 acres of Federal minerals underlying private surface to protect possible cave systems north and northeast of the existing ''cave protection area'' protected by the Lechuguilla Cave Protection Act (107 Stat. 1983 (1993)). An additional 8,198.72 acres of State land and mineral estate within the proposed withdrawal area, if acquired by the United States, would become subject to the withdrawal. Notice of the proposed withdrawal has been published which closed the land for up to 2 years from settlement, sale, location, or entry under the public land laws, including the mining laws, and from mineral leasing, subject to valid existing rights. This notice provides a public comment period and opportunity for public meetings.

DATES: Comments and requests for a public meeting must be received by August 9, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Carlsbad Field Office Manager, BLM, Carlsbad Field Office, 620 E. Greene St., Carlsbad, New Mexico 88220.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7593.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 64 FR 18932, April 16, 1999 which segregated the land and minerals described therein from settlement, sale, location, or entry under the public land laws, including the mining laws, and from mineral leasing, subject to valid existing rights, for up to 2 years from the date of publication of that notice

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, objections, or meeting requests in connection with the proposed withdrawal may present their views in writing to the Carlsbad Field Office Manager.

Notice is hereby given that a public meeting will be held to discuss the proposed withdrawal and solicit comments from the public. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: April 28, 1999.

Richard A. Whitley,

Acting State Director.

[FR Doc. 99–11695 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1430–01; CARI 0330]

Public Land Order No. 7389; Revocation of Public Land Order No. 2929; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order in its entirety as it affects 40 acres of public land withdrawn for the Forest Service's Kennedy Meadow Administrative Site. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to make the land available for a land exchange in accordance with the provisions of Section 206 of the Federal Land Policy and Management Act of 1976. The land is temporarily closed to surface entry and mining due to the pending land exchange. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2929, which withdrew public land for the Forest Service's Kennedy Meadow Administrative Site, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 22 S., R. 36 E.,
Sec. 8, NW¼SW¼.

The area described contains 40 acres in Tulare County.

2. The above described land is hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 716 (1994).

Dated: April 29, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–11694 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–5700–77; WYW–139483]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; direct sale of public lands in Lincoln County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian

T. 25 N., R. 118 W.,
Section 19, lot 38;
Section 20, lot 33.

The above lands aggregate 40 acres.

FOR FURTHER INFORMATION CONTACT: Becky Heick, Realty Specialist, Bureau of Land Management, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101, 307–828–4506.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above land to Mr. Robert Kirk, an adjacent landowner, by direct sale, at fair market value. The disposal of this land will resolve an inadvertent trespass.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no significant public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Field Office, Kemmerer, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

Pursuant to the authority contained in Section 4 of Executive Order 11990 dated May 24, 1977 (42 FR 26961), and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1718, 1719, this sale will be subject to a permanent restriction which constitutes a covenant running with the land for the purpose of protecting and preserving the wetland areas. The land may not be used for the construction or placement of any buildings, structures, facilities, or other improvements, excluding fences, and that ''new construction'' on the land as defined in Section 7(b) of Executive Order 11990 is prohibited. Draining or causing to drain any of the areas that are too wet for crop production would be prohibited. No disturbance of willows or filling of wet areas or alteration of the river channel for the purpose of creating farmable lands will be allowed without formal consultation with the Corps of Engineers. The restriction applies to the entire 40 acre parcel.

Sale of the parcel will result in the cancellation of the Curtis Allotment and the 25 associated federal AUMs. Robert Kirk is the current lessee of this allotment, and has signed a waiver allowing for cancellation of this grazing permit.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days after issuance of this notice, interested parties may submit comments to the Field Manager, Kemmerer Field Office, Bureau of Land Management, 312 Hwy. 189 North, Kemmerer, WY 83101. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: April 21, 1999.

Jeff Rawson,

Field Manager.

[FR Doc. 99–11716 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 1, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 26, 1999.

Carol D. Shull,

Keeper of the National Register.

LOUISIANA

Ascension Parish, Dixon House, 38127 LA 42, Prairieville, 99000634

MASSACHUSETTS

Barnstable County, Bridge Road Cemetery, Bridge Rd., Eastham, 99000636

Middlesex County

Rogers Fort Hill Park Historic District, Roughly bounded by High St., Mansur St., Concord R., and Lowell Cemetery, Lowell, 99000635

MISSOURI

Clay County

Excelsior Springs Hall of Waters Commercial West Historic District, Roughly along portions of Thompson, and St. Louis Aves.; South, Main, Marietta, and Spring Sts.; and Elms Blvd., Excelsior Springs, 99000637

Excelsior Springs Hall of Waters Commercial East Historic District, Roughly along portions of East and West Broadway and Main St., Excelsior Springs, 99000638

NEW YORK

Suffolk County

Quogue Life-Saving Station, 78 Dune Rd., Quogue, 99000640

NORTH CAROLINA

Wayne County

Mount Olive Historic District, Roughly bounded by Park Ave., Wooten, Nelson, and Johnson Sts., Mount Olive, 99000639

OREGON

Deschutes County

Gerking, Jonathan N.B., Homestead, 65725 Gerking Market Rd., Bend vicinity, 99000644

Multnomah County

Bramhall, Jennie, House, 5125 NE Garfield Ave., Portland, 99000643

Leutgert, Henry C., Building (Eliot Neighborhood MPS), 2323, 2325, 2327, and 2329 NE Rodney, Portland, 99000642

Wasco County

Kelly, Joseph D. and Margaret, House, 921 E. 7th St., The Dalles, 99000641

PENNSYLVANIA

Cumberland County

Dykeman's Spring, Dykeman Rd., 0.25 mi E of PA 696, Shippenburg, 99000645

Lancaster County

Weber—Weaver Farm, (Lancaster County MPS), 1835 Pioneer Rd., West Lampeter, 99000646

Montgomery County

Fetter's Mill, 2543 Fetter's Mill Dr., Bryn Athyn, Lower Moreland, 99000647

A Request for a move has been made for the following resource:

MISSOURI

Callaway County

Robnett—Payne House, 601 W. Sixth St., Fulton, 98001136

[FR Doc. 99–11702 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Meeting Notice; USITC–99–020

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 17, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., 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. 731–TA–825–826 (Preliminary) (Certain Polyester Staple Fiber from Korea and Taiwan)—briefing and vote
5. Outstanding action jackets:
   (1) Document No. GC–99–027: Inv. No. 337–TA–411 (Certain Organic Photoconductor Drums and Products Containing Same)
   (2) Document No. GC–99–034: Inv. No. 337–TA–392 (Certain Digital Satellite Systems (DSS) Receivers and Components Thereof)
   (3) Document No. INV–99–077: Institution of five-year reviews on Certain Industrial Belts, Industrial Nitrocellulose, Steel Rails, Drafting Machines, Small Business Telephone Systems, Mechanical Transfer Presses, Multiangle Laser Light-Scattering Instruments, and Benzyl Paraben

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: May 4, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11750 Filed 5–5–99; 4:47 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Reinstatement of OMB Control Number 1103–0030; Comment Request

ACTION: Notice of Information Collection Under Review for Reinstatement; COPS Department Initial Report.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 14, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–616–5998. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement.

(2) *Title of the Form/Collection:* COPS Department Initial Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 012/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The COPS Initial Report will be mailed to all new COPS grant recipients. Recipients must complete the form within thirty days of the date of their first grant award to comply with their grant program requirements.

The COPS Department Initial Report will collect basic information about recipient's sworn personnel and the recipient's level of community policing plans and programs at the beginning of the grant period Survey questions will allow the COPS Office to establish a baseline of each grant recipient's community policing plans and programs at the beginning of the grant period for the purpose of monitoring progress of grant recipients in implementing community policing programs and activities with their federal COPS grant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* COPS Department Initial Report: Approximately 1,066 respondents, at 1.5 hours per respondent (including recordkeeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 2,400 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–11630 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Reinstatement of OMB Control Number 1103–0030; Comment Request

ACTION: Notice of information collection under review; COPS officer progress report.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following

information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 14, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–616–5998. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement.

(2) *Title of the Form/Collection:* COPS Officer Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form COPS 013/01, Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The COPS Officer Progress Report will be mailed to all COPS grant recipients. Recipients must complete the report every six months following the date of the grant award to comply with their grant program requirements.

The information collected on the COPS Officer Progress Report will be used to track summary data on the characteristics of officers hired with COPS funding and to monitor the progress of grantees in hiring, training, and deploying these officers into community policing. In addition, semiannual submission of the COPS Officer Progress Reports will assist the COPS Office in identifying recipients which may be in need of additional information or technical assistance concerning appropriate professional training and activities for officers deployed in community policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* COPS Officer Progress Report: Approximately 11,300 respondents, reporting on an estimate number of 5 officers, at 2 hours per response (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 11,300 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–11631 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; application for cancellation of removal.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10318, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Cancellation of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–42, Executive Office of Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Individual aliens determined to be removable from the United States. This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion in their case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1640 responses per year at 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 9,430 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11637 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities; Reinstatement, Without Change, of a Previously Approved Collection for Which Approval has Expired; Comment Request.

ACTION: Notice of information collection under review; appeal fee waiver request.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10319, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Resinstatment, Without Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Appeal Fee Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–26A, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Individual aliens appearing before the Board of Immigration Appeals (BIA). This form is used to apply for a waiver of the fee required to properly file an appeal with the BIA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6100 responses per year at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6100 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11638 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired; Comment Request.

ACTION: Notice of information collection under review; notice of appeal to the Board of Immigration Appeals of decision of immigration judge.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10320, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of response.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, Without Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of Form/Collection:* Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–26, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* A party (either individual aliens or the Immigration and Naturalization Service) who disagrees with the decision of an Immigration Judge may request a final decision of the Attorney General. Review of such appeals has been delegated to the Board of Immigration Appeals (BIA). This information collection is used to consider appeals to the BIA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 27,000 responses per year at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11639 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired; Comment Request.

ACTION: Notice of information collection under review; Change of Address Form.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10319, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, Without Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Change of Address Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–33, Executive Office of Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Individuals in immigration proceedings are statutorily required to report any change of address. The information in the form is used by the Immigration Courts and the Board of Immigration Appeals to ascertain where to send the notice of the next administrative action or notice of any decisions which have been rendered in an individual's case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses per year at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11640 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that two proposed Consent

Decrees in *United States* v. *Alshabkhoun, et al.,* Civ. No. 98–C–583–S (W.D. Wi.) were lodged with the United States District Court for the Western District of Wisconsin on April 22, 1999. This case arises, and the proposed Consent Decrees secure relief, under the Clean Water Act, 33 U.S.C. 1251–1387.

The proposed Consent Decrees would each provide for prohibitions of future violations of the provisions of the Clean Water Act. In addition, one decree would provide for a $2,200 penalty under the Clean Water Act by Defendant Paul M. Garbelman, and the other would provide for a $3,000 penalty under the Act by Defendant David W. Rogerson.

The Department of Justice will receive, until thirty (30) days from the date of this notice, written comments relating to the proposed Consent Decrees. Comments should be addressed to the United States Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, 601 D Street, NW., Suite 8000, Washington, DC 20004, to the attention of Lewis M. Barr, Senior Trial Counsel, Environmental Defense Section, and should refer to *United States* v. *Alshabkhoun, et al.,* Civ. No. 98–C–583–S (W.D. Wi.) and to DJ Reference No. 90–5–1–1–4485.

The proposed Consent Decrees may be examined at the Clerk's Office, United States District Court for the Western District of Wisconsin, United States Courthouse, 120 North Henry St., Madison, WI 53703–2559, during regular business hours, or copies may be requested from Lewis M. Barr at (202) 514–4206.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 99–11663 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* versus *Coon Refrigeration, et al.,* Civil Action No. 90–212 (W.D. Pa.), was lodged on April 28, 1999 with the United States District Court for the Western District of Pennsylvania. The United States filed its action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred and to be incurred in cleaning up the Pagan Road Superfund Site in western Pennsylvania. The proposed consent decree requires CBS Corporation, formerly known as Westinghouse Electric Corporation, to pay the United States $300,000 in reimbursement of past response costs incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Coon Refrigeration, et al.,* DOJ Ref. #90–11–2–619.

The proposed consent decree may be examined at the office of the United States Attorney, 100 State Street, Suite 302, Erie, PA Protection Agency, 615 Arch Street, Philadelphia, PA 19103, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 for the consent decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11667 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree in the consolidated cases captioned *United States* v. *Ford Motor Company, et al.,* Case No. 98–73266 (E.D. Mich.) (formerly designated Case No. 98–60085) and *Ford Motor Company, et al.* v. *United States,* Case No. 98–71305 (E.D. Mich.) was lodged with the United States District Court for the Eastern District of Michigan on April 20, 1999, pertaining to the Willow Run Creek Superfund Site, located in Wayne and Washtenaw Counties, Michigan (the ''Site'').

The proposed consent decree would resolve the United States' civil claims for past response costs relating to the Site under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ''CERCLA''), 42 U.S.C. 9607, against the eight defendants named in Case No. 98–73266. The eight settling defendants are Ford Motor Company; General Motors Corporation; Chrysler Corporation; Chrysler Pentastar Aviation, Inc.; The Regents of the University of Michigan; Wayne County, Michigan; Ypsilanti Township, Michigan; and the Ypsilanti Community Utilities Authority. As provided by the proposed consent decree, the eight settling defendants would pay a total of $1.10 million to the EPA Hazardous Substances Superfund.

The proposed consent decree also would resolve CERCLA contribution claims for past and future response costs relating to the Site (including claims arising out of injury to, destruction of, of loss of natural resources at the Site) asserted against the United States. Under the proposed consent decree, the United States, on behalf of certain Settling Federal Agencies, would pay an additional $50,000 to the EPA Hazardous Substances Superfund, and would pay $450,000 to the plaintiffs in Case No. 98–71305.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ford Motor Company, et al.,* Case No. 98–73266 (E.D. Mich.), and DOJ Reference No. 90–1–3–1753.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Eastern District of Michigan, 211 W. Fort Street, Suite 2300, Detroit, MI 48226–3211; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Thomas Kenney (312–886–0708)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check

in the amount of $9.50 for the consent decree only (38 pages at 25 cents per page reproduction costs), or $10.00 for the consent decree and all appendices (40 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11664 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *Marshall, et al.*, Civil Action No. 98–1478A, was lodged on April 19, 1999 with the United States District Court for the Northern District of West Virginia. The United States filed this action pursuant to the Clean Air Act to obtain an injunction requiring compliance with the National Emissions Standards for the Hazardous Air Pollutant (NESHAPs) Asbestos and to obtain civil penalties for violations of the Clean Air Act and federal regulations. The Consent Decree Sahara Holdings Limited Liability Company to demolish and properly dispose of the Broaddus Apartment Building in Clarksburg, West Virginia. Allen G. Saoud, a former principal in Sahara Holdings Limited Liability Company is required to participate in the demolition and disposal. In addition, the City of Clarksburg has committed to spend up to $10,000 to assist in the proper disposal of the materials removed from the Broaddus Apartment Building.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Marshall, et al.*, Do Ref. #90–5–2–1–2064.

The proposed consent decree may be examined at the office of the United States Attorney, 12th and Chapline Streets, Room 236, Federal Building, Wheeling, West Virginia; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 for the consent decree without attachments or $22.50 for the consent decree with the attachments (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11665 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *The Port of Seattle, et al.*, Civil Action No. C99–665–R, was lodged on April 30, 1999, with the United States District Court for the Western District of Washington. The Consent Decree requires each defendant to compensate the trustees for natural resource damages at the Tulalip Landfill Superfund Site, which consist of the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of the Interior, for natural resource damages at the Tulalip Landfill Superfund Site that have resulted from the release of hazardous substances at the Site. Under the Consent Decree, six private parties, the Tulalip Tribes of Washington and the United States on behalf of the United States Navy and the United States Bureau of Indian Affairs, will pay a total of $675,348 for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Port of Seattle, et al.*, DOJ Ref. #90–11–3–1412/6.

The proposed consent decree may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11666 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 162–99]

Privacy Act of 1974; Notice of Modified System of Records

The Department of Justice proposes to modify the Pubic Safety Officers Benefits System, JUSTICE/OJP–012. The primary purpose for establishing the system of records was to determine whether the surviving beneficiaries of public safety officers killed in the line of duty were eligible for benefits as authorized by the Public Safety Benefits Act.

The Department now proposes to modify the system to reflect the expanded scope of the PSOB program, specifically through the addition to categories of individuals and records. The system is expanded to reflect the addition of data on public safety officers permanently and totally disabled in the line of duty, and the dependents of public safety officers eligible for educational benefits. The expansion of the categories of individuals and records, as identified in the attached **Federal Register** notice, permits the agency to maintain records as public safety officers permanently and totally disabled in the line of duty and survivor's eligibility to educational benefits in order to ascertain eligibility under the program.

In addition, the Department is revising the ''System Location'' and ''System Manager and Address' sections to reflect a move of the system, and updating the 'Storage'' and ''Retention'' sections to reflect an automation of the system.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given 30 days in which to comment on the proposed new routine uses. Any comments must be submitted in writing to Mary Cahill, Management Analyst, Management and

Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 by June 9, 1999.

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: April 30, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/OJP–012

SYSTEM NAME:

Public Safety Officers Benefits System.

SYSTEM LOCATION:

Bureau of Justice Assistance, Office of Justice Programs, (OJP), 810 Seventh Street, NW, Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Public Safety Officers who are permanently and totally disabled by a traumatic injury in the line of duty and the surviving beneficiaries of public safety officers who died while in the line of duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index by claimant survivor and deceased or permanently and disabled Public Safety Officers; case files of eligibility documentation; and benefit payment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 42 U.S.C. 3796 and 44 U.S.C. 3103.

PURPOSES:

Information contained in this system is used or may be used to determine and record eligibility of Public Safety Officers under the Public Safety Officers Benefits Act and the Federal Law Enforcement Dependents Assistance Act.

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

Records, or any information derived therefrom, may be disclosed as follows: To State and local agencies to verify and certify eligibility for benefits; to researchers for the purpose of researching the cause and prevention of public safety officer line of duty deaths; to appropriate Federal agencies to coordinate benefits paid under similar programs; in a proceeding before a court or adjudicative body before which the OJP is authorized the appear, when i. The OJP, or any subdivision thereof, or ii. Any employee of the OJP in his or her official capacity, or iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation; to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; to the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

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

STORAGE:

Information in this system is maintained on a master index, in folders and in an automated information system.

RETRIEVABILITY:

Information is retrieved by name of claimant, name of deceased or disabled Public Safety Officer, and case file number.

SAFEGUARDS:

Computerized information is safeguarded and protected by computer password key and limited access. Noncomputerized data is safeguarded in locked cabinets. All files are maintained in a guarded building.

RETENTION AND DISPOSAL:

Files are retained in the Public Safety Officer Benefits (PSOB) Office on hard copy and on a computer network. Files will be disposed of pursuant to OJP Handbook 1330.2A.

SYSTEM MANAGER(S) AND ADDRESS:

PSOB Program Officer, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing with the envelope and the letter clearly marked ''Privacy Access Request.'' Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above and state clearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Public agencies including employing agency, beneficiaries, educational institutions, physicians, hospitals, official state and Federal Documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–11661 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

EAAG/A Order No. 163–99]

Privacy Act of 1974; Notice of Modified System of Records

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, codified at 21 U.S.C. 862), and section 815 of the 1993 National Defense Authorization Act (Pub. L. 102–484 codified at 10 U.S.C. 2408), provide that certain individuals convicted of drug trafficking or possession are disqualified from receiving certain Federal benefits, and individuals convicted of certain defense-contract related felonies may not be employed by or engage in certain activities with defense contractors or first tier subcontractors. The Attorney General has directed the Denial of Federal Benefits Clearinghouse of the Department of Justice to perform certain duties in order that the purpose of this act be fulfilled. These duties include maintaining an information clearinghouse for persons so disqualified and forwarding to the General Services Administration (GSA) data concerning court denials of Federal benefits for inclusion in GSA's Lists of Parties excluded for Federal

Procurement and Nonprocurement Programs, more commonly referred to as the ''Debarment List'' and for employment eligibility purposes.

The Department now proposes to modify the system to clarify an existing Privacy Act routine use disclosure regarding the disclosure for disqualification for certain Federal benefits, defense-related employment, and other activities and to reinstate a Privacy Act routine use regarding disclosure to courts for verification purposes. The routine use disclosure, as modified, allows for disclosure to Federal agencies, certain private entities, certain defense-related contractors and first-tier subcontractors, and makes it clear that such parties will only have access to Clearinghouse information in order to verify eligibility for Federal benefits, employment or other certain activities, pursuant to the mandate in the Anti-Drug Abuse Act and the Defense Authorization Act. The routine use will permit disclosure of information to these parties only for the aforementioned purposes. In addition, a routine use disclosure to courts is being reinstated to allow for disclosure of clearinghouse information for verification purposes.

Moreover, the Department is expanding the record source category to include: (1) The individuals convicted of qualifying offenses and, (2) U.S. Attorneys.

A number of smaller, less substantive changes are also being made. The system location section is being revised to reflect the current location of the system at 810 Seventh Street, NW., Washington, DC 20531. The authority section is being revised to refer to the current statutory citations, 21 U.S.C. 862 and 10 U.S.C. 2408(c). The system is also being revised to reflect the fact that information is now being maintained in a database in a secured computer network and the information is now retrievable by case number, as well as name of individual and Social Security number. The reference to computer diskettes under Safeguards has been removed, as information is no longer being maintained in that format. Finally, the category of records section is being revised to include additional clarifying information and to read more clearly.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given 30 days in which to comment on the proposed new routine uses. Any comments must be submitted in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 June 1, 1999.

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: April 30, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/OJP–13

SYSTEM NAME:

Denial of Federal Benefits Clearinghouse System (DEBAR).

SYSTEM LOCATION:

Office of Justice Programs; Denial of Federal Benefits Program (DFBP), 810 Seventh Street NW, Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual convicted of a Federal or State offense involving drug trafficking or possession of a controlled substance who has been denied Federal benefits by Federal or State courts and any individual convicted of defense-contract related felonies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include any which are necessary to identify a person who is convicted of drug trafficking or possession of a controlled substance and sentenced by a State or Federal judge to a denial of Federal benefits pursuant to 21 U.S.C. 862; convicted of a defense contract-related felony and sentenced by a Federal judge to a denial of Federal benefits pursuant to 10 U.S.C. 2408; and any records which may be relevant to consideration of employment or other Federal benefits. For example, included are current and prior offense and arrest data such as type of offense for which the individual is being placed on a list of ineligibles to receive benefits; court and sentencing data, including community service sentencing, if any; identification of benefits to be denied and status thereof, including period of denial; and treatment data. Records also include court orders, notices from U.S. Attorneys concerning convictions, Federal agency benefit listings, and a log of groups or individuals requesting information about an offender's denials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 21 U.S.C. 862 and 10 U.S.C. 2408(c).

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

Records, or any information derived therefrom, may be disclosed as follows: to the General Services Administration (GSA) for inclusion in the publication, ''Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' more commonly known as the ''Debarment List;'' to Federal agencies, certain private entities, certain defense-related contractors and first-tier subcontractors that require access to such records in order to verify disqualifying convictions prior to awarding a Federal benefit, as defined under 21 U.S.C. 862, or employment under 10 U.S.C. 2408(a); to the sentencing court for verification purposes; in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when: i. The OJP, or any subdivision thereof; or ii. Any employee of the OJP in his or her official capacity; or iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation; to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice, unless it is determined that release of the specific information in a particular case would constitute an unwarranted invasion of personal privacy; to a Member of Congress or a staff person acting on the Member's behalf, when the Member or staff officially requests the information on behalf of, and at the request of, the individual who is the subject of the record; to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

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

STORAGE:

Information maintained in the system is stored in a database on a secured computer network, as well as in manual file folders.

RETRIEVABILITY:

Data is retrievable by name of individual, social security number, and case number.

SAFEGUARDS:

Information contained in the system is maintained in accordance with DFBP procedures. Manual information in the system is safeguarded in locked file cabinets within a limited access room in a limited access building. Access to manual files is limited to personnel who have a need for files to perform official duties. Operational access to information maintained on a dedicated computer system, is controlled by levels of security provided by password keys to prevent unauthorized entry, and an audit trail of accessed information. Access is also limited to personnel who have a need to know to perform official duties.

RETENTION AND DISPOSAL:

Data is maintained for current and prior years in a master file. Data is not destroyed, but maintained for historical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DFBP, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be in writing, with the envelope and letter marked ''Privacy Access Request.'' Direct the access request to the System Manager listed above. Identification of individuals requesting access to their records will include fingerprinting (28 CFR 20.34).

CONTESTING RECORDS PROCEDURES:

An individual desiring to contest or amend information maintained in the system should direct the request to the System Manager listed above. The request should state clearly and concisely the information being contested, the reasons for contesting the information, and the proposed information amendment(s) sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are Federal and State courts, individuals convicted of certain drug offenses, individuals convicted of defense-contract related felonies, United States Attorneys, and Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–11662 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 1999, and published in the **Federal Register** on February 10, 1999, (64 FR 6684), Isotec, Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgoning (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to use small quantities of the listed controlled substances to produce standards for analytical laboratories.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Isotec, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Isotec, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11693 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–41]

Paul W. Saxton, Continuation of Registration

On July 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Paul W. Saxton, D.O. (Respondent) of Sandy, Utah, notifying him or an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS9420059 and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that his continued registration would be inconsistent with the public interest.

By letter dated August 15, 1996, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Salt Lake City, Utah on March 4 through 7, 1997; March 17 through 19, 1997; and June 23 through 27, 1997, before Administration Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On October 6, 1998, Judge Randall issued her Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be continued with no adverse action being taken. No exceptions were filed by either party to the Administration Law Judge's Decision, however on November 5, 1998, Respondent filed an Application for Attorney's Fees and Expenses. Thereafter, on November 19, 1998, Judge Randall transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Recommended Rulings, Findings of Fact. Conclusions of Law and Decision of the Administration Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

As a preliminary matter, the Deputy Administrator finds that Respondent's Application for Attorney's Fees and Expenses filed on November 5, 1998, was premature. Pursuant to 5 U.S.C. 504 and 28 CFR 24.101, *et seq.*, such a request may only be filed after a party has prevailed in an action brought by DEA. Since this final order is the final agency action in this matter, Respondent's request was premature and is therefore denied.

The Deputy Administrator finds that Respondent has been practicing osteopathic medicine since 1979, and since about 1990, the primary aspect of his practice has been the treatment of pain.

The Utah agency responsible for issuing licenses to professionals received complaints concerning Respondents in July 1988, January 1989 and August 1993. Following an investigation of these complaints, no action was taken against Respondent. Respondent however did admit that he prescribed anabolic steroids for muscle enhancement until sometime in 1992. In 1992 he was told by state and Federal investigators that this practice became illegal in the State of Utah in 1990 and federally in February 1991. There is no evidence that Respondent has prescribed anabolic steroids for muscle enhancement after being advised that such practice was illegal.

In January 1994, the state agency received a complaint from a pharmacist that Respondent had prescribed six different controlled substances to one individual on January 10, 1994. As a result, the state agency and DEA initiated an investigation of Respondent. Investigators obtained patient prescription profiles from local pharmacies. Then on November 30, 1995, the investigators executed an administrative inspection warrant at Respondent's office during which the investigators seized 38 patient charts. Also during execution of the administrative inspection warrant it was discovered that Respondent has purchased controlled substances but had not maintained a log or other record, other than the patient charts, indicating the disposition of the drugs, nor had Respondent conducted a biennial inventory of the controlled substances that he had purchased.

Next, the Government had an expert in pain management and the proper use of controlled substances review 18 of the 38 patient medical records that were seized from Respondent's office. After reviewing these records the Government's expert concluded that there are ''consistent patterns supporting the contention that [Respondent] has been inappropriately and excessively prescribing controlled substances, particularly opioids.''

Since Respondent's patients that are at issue in this proceeding were supposedly being treated by Respondent for chronic pain, there was extensive evidence presented by both the Government and Respondent regarding the treatment of chronic pain patients. The Government's expert defined chronic pain as ''pain which has been present for over 6 months.'' He stated that pain is subjective and therefore a physician has to rely on a patient's complaints of pain. He further stated that the source of an individual's pain may never be identified. The Government's expert acknowledged that using opioids to relieve chronic pain is a legitimate medical practice and that some patients may require opioids for the rest of their lives to control chronic pain. He testified that once a diagnosis was made, a physician should start with the most benign medications at the least dose and increase the dose or change the medication as needed. According to the Government's expert there does not appear to be an arbitrary upper dosage limit for most opioids, however increasing dosage levels may not be appropriate if the pain is not responding to the opioids because ''[m]any types of pain are not responsive to opioids. * * * Regardless of what dose.'' Nevertheless the Government's expert testified that:

> [M]ost chronic pain patients are never going to be pain free. * * * But I think if their pain is managed at a level where they can function where the pain isn't a big issue in their life anymore, then that's considered reasonable control. * * * [But] there are a lot of other treatment options that would be used before opioids would be tried.

Two experts testified on behalf of Respondent. The first, an expert in family practice with chronic pain patients comprising the predominant portion of his practice, defined intractable pain as ''[p]ain that has resisted all reasonable efforts to eliminate the source or to eliminate the symptoms.'' He testified that there is no ceiling on the use of controlled substances in the treatment of chronic pain, and that the dosage and length of therapy are irrelevant as measurements to determine the quality of medical treatment received by chronic pain patients. This expert further testified that a physician should not reduce the levels of a patient's medications if the patient's pain is being managed, and that it is appropriate to prescribe combinations of controlled substances since different medications work for different levels of pain and there are varying effective time spans for various medications. It was the opinion of this expert that physicians are afraid to prescribe narcotics for fear of prosecution by regulatory agencies.

Respondent's other expert witness was qualified as an expert in family practice with a subspecialty in pain management and opioid treatment. He has published numerous articles regarding the treatment of chronic pain patients. According to this expert, there is a difference of opinion on the medical profession regarding the use of opioids in the management of chronic pain, with two differing approaches classified as the therapeutic school, to which Respondent and his experts belong, and the dependency school, to which the Government's expert belongs. The field of pain management is a controversial issue with the treatment policy evolving within the medical profession.

According to this expert, the measure of successful treatment of a chronic pain

patient is whether the patient has experienced an increase in his/her level of comfort and function and has an improved quality of life. A physician has to trust his/her patient and individualize the treatment. There is no ceiling or upper limit on the use of opioids and in determining whether a dosage level is adequate for a chronic pain patient one should not look at the number of pills consumed, but should look at the functioning level of the patient. The expert further testified that prescribing combinations of drugs meets the standards of the therapeutic school since a patient might use one type of drug for light pain and another type for more severe pain.

Respondent also introduced into evidence a copy of a document written in 1997 by the American Academy of Pain Medicine (AAPM) and the American Pain Society (APS) entitled ''The Use of Opioids for the Treatment of Chronic Pain,'' (hereinafter referred to as ''Consensus Statement''). One conclusion of the Consensus Statement is that ''[p]ain is often managed inadequately, despite the ready availability of safe and effective treatments,'' because impediments ''to the use of opioids include * * * fear if regulatory action.'' The Consensus Statement also provided guidance for regulatory agencies for determining accepted principles of practice for the use of opioids for chronic pain patients. The Consensus Statement indicated that in initially evaluating a patient a complete history and physical examination should be conducted. The treatment plan should be individualized and should include different types of treatment modalities. Consultation with a specialist in pain medicine or with a psychologist may be warranted. The Consensus Statement further provided that ''[t]he management of pain in patients with a history of addiction or a comorbid psychiatric disorder requires special consideration, but does not necessarily contraindicate the use of opioids.'' Review of treatment efficacy should occur periodically and complete documentation is essential.

Respondent testified that his treatment objectives for his chronic pain patients are (1) to improve the patient's quality of life; (2) to increase the patient's level of comfort; and (3) to increase that patient's ability to function. He further testified that when he diagnoses a patient with chronic pain, he uses the ''stepladder approach'' to prescribing medication, starting with noncontrolled substances, then Schedule III and IV controlled substances, and then if necessary Schedule II controlled substances. In treating his chronic pain patients, Respondent also uses other modalities in conjunction with his prescribing of controlled substances.

After reviewing the 18 patient records, the Government's expert provided an opinion regarding the appropriateness of Respondent's prescribing of controlled substances for each patient and regarding a number of general inadequacies he found in Respondent's treatment of his chronic pain patients. However, in rendering this opinion the Government's expert did not examine any patient personally; did not interview any of the patients; did not obtain a medical history; and did not discuss the information in the charts, or the lack therefor, with Respondent, the treating physician.

According to the Government's expert, Respondent's treatment of the patients was inadequate because the patients entering into treatment with Respondent received inadequate evaluations and diagnosis, since Respondent provided a general physical examination rather than an examination tailored to the patient's specific pain complaint. However, the Government's expert admitted at the hearing that he could not decipher the meaning of some of Respondent's abbreviations found in the patient records. The Government's expert was also of the opinion that Respondent's treatment was inadequate because he simultaneously prescribed similar medications without medical justification, allowing the patient to determine which of the overlapping medications to take, and he made no attempt to reduce or control medication doses responsive to the patient's condition. In addition, Respondent prescribed controlled substances to several patients known by him to have ongoing substance abuse or psychiatric problems, with some patients actually having recently completed substance abuse treatment, which according to the Government's expert made continued controlled substance use suspect. Further, the Government's expert found that if Respondent's prescribing of controlled substances for family members was not blatantly illegal, it was at least ethically prohibited. The Government's expert also concluded that Respondent appeared reluctant to seek help from other medical specialists outside of his area of expertise; failed to correlate treatment with the patient's improvement or lack of improvement; and failed to use other modes of treatment other than prescribing controlled substances.

The Government's expert testified that based upon his review of the patient records, ''I do not believe that there was sufficient diagnosis or basis for the prescribing of the substances prescribed by [Respondent].''

Respondent's first expert reviewed Respondent's patient charts, read the report of the Government's expert, and discussed the patient charts with Respondent. He concluded that in his opinion, Respondent was thorough in his diagnosis, that he adequately examined the patients, and that he had maintained adequate charts. In his opinion, Respondent's prescribing was well within the standards of reasonable medical care; his monitoring of the patients' medications was adequate; his evaluation of each patient on a regular basis was adequate; and his prescribing of narcotic analgesics was forlegitimate clinical reasons.

Respondent's other expert testified concerning Respondent's treatment in general and specifically regarding Respondent's treatment of eight of the patients at issue. In rendering his opinion, he reviewed the patient charts and discussed the patients' treatment with Respondent. According to this expert, Respondent met the standard of care in his treatment under the therapeutic school treatment approach for chronic pain patients. However, the expert acknowledged that Respondent's practices were not without flaws. In his opinion, Respondent did not document his initial findings regarding the medical history and physical examination in the recommended detail when making his chronic pain diagnostic evaluation of his patients; he did not consistently consult previous treating physicians; while he discussed the risks with his patients, to include acetaminophen toxicity, he did not chart the possible side effects in all of the medical records; and although he did consult with specialists in many instances, Respondent could have utilized consultants more consistently in his patients' care. During his testimony, this expert stressed the need for thorough documentation stating that ''there should be clear-cut indications in the medical record that [the patient's] function is better with the medications. And if it's not, then the doctor puts himself at risk if he doesn't document sufficiently in the record that the patient actually is doing better.''

However, this expert also testified that Respondent had a working diagnosis for each patient which justified the prescribed medications; had an adequate treatment plan documented in his patient charts; saw his patients frequently to monitor their progress; prescribed controlled substances in compliance with applicable law; and maintained quite

adequate records after the sparse initial visit entries. He further testified that in his opinion, Respondent's prescribing practices were appropriate.

In her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, Judge Randall went into great detail regarding the medical problems and treatment of the patients at issue in this proceeding. She discussed the prescription profiles, the information contained in the patient charts, the experts' testimony, Respondent's testimony, and the testimony of some of the patients. Since the Deputy Administrator is adopting Judge Randall's findings of fact in their entirety, there is no need for him to reiterate them. However, the Deputy Administrator makes the following general findings regarding Respondent's treatment of the patients at issue.

In general, the patients at issue suffered from a variety of problems including headaches, low back pain, pain in other parts of their bodies, sleep disturbances, multiple sclerosis, and depression. These patients were seen by Respondent at least monthly, and sometimes weekly. At virtually every visit, they were prescribed a combination of several different controlled substances, as well as other medication. Respondent explained the use of these medications, warned of the dangers of misusing the medications, and adjusted the medication regimen periodically to find the best combination of drugs. In addition, these patients received other forms of treatment such as osteopathic manipulations, traction, physical therapy, trigger point injections, range of motion exercises, transcutaneous electric nerve stimulation, and training in the proper use of body mechanics.

Respondent prescribed large quantities of controlled substances to these patients on a regular basis; however, he appeared to monitor his patients' use of the medications. He would not refill a prescription without seeing the patient. If Respondent became concerned about the amount of controlled substances being consumed by a patient, he would evaluate whether the patient appeared coherent and able to function. Respondent would perform liver toxicity tests to determine whether a patient was consuming too much acetaminophen and when a patient would experience a side effect from a drug, Respondent would discontinue the medication. Respondent assisted one patient in tapering off all medication, however the patient's pain became intolerable and Respondent resumed prescribing controlled substances for the patient.

A couple of the patient charts indicate that Respondent performed an impairment evaluation using the American Medical Association guidelines. Respondent also referred many of these patients to specialists, such as neurologists or psychiatrists, or to pain clinics. For the most part, these specialists confirmed Respondent's diagnosis, however, several of the specialists expressed concerns regarding the amount of controlled substances being prescribed by Respondent to the patients. Reports from these specialists, including those that expressed concerns, are included in the patients' charts. Two of Respondent's patients were referred to the pain clinic where the Government's expert was the medical director. In neither instance did the Government's expert contact Respondent to learn of the patient's history, however the Government's expert testified that there was no medical standard requiring such contact. One patient left the clinic because he could not afford to continue his treatment there. The other patient was tapered off his medication while at the clinic, but when the clinic could not manage the patient's pain, he was put back on narcotics. According to this patient, the clinic encouraged extensive daily exercise and meditation, however he further testified that this was not realistic if one has a job given the time constraints.

According to the Government's expert there were a number of ''red flags'' in Respondent's charts which should have alerted Respondent to the fact that these drugs were not being used for a legitimate medical purpose. First, some patients were involved in a number of accidents, however Respondent was not always told of them. On one occasion, a patient was arrested for driving under the influence of drugs. Respondent regulated the patient's medication, but after the patient's second arrest, Respondent refused to prescribe any more medication unless the patient signed a written promise not to drive while taking the medication. Second, a number of the patients were being treated by other doctors. In some of these instances, Respondent was not aware of the other doctors' treatment. According to Respondent and the patients, if he was made aware of the other treatment, he would discuss the situation with the patients and indicate that they could have only one treating, physician. Third, on several occasions' Respondent was contacted by pharmacists, a home health care nurse and/or insurance carriers regarding the large amount of controlled substances being prescribed to patients. Respondent credibly testified that he took these concerns into consideration when treating the patients. Fourth, one of Respondent's patients was sharing drugs with a family member and another with a friend. Also two of Respondent's patients had allegedly altered prescriptions. With all of these patients, Respondent advised them that this behavior was unacceptable and if it continued they would no longer be his patients. In fact, Respondent did ultimately stop treating one of them. Fifth, the spouse of one of Respondent's patients told Respondent of her husband's past drug problems and that he faked pain and exhibited drug seeking behavior. Respondent met with the patient and his wife to discuss this situation and determined that the patient had chronic pain and needed the medication. Respondent's expert testified that a family member's concerns should be addressed, but often a family member needs to be educated that just because a person is taking a large number of controlled substances does mean that the person is an addict or abuser. Sixth, one of the patient charts indicated that the patient lost several prescriptions, however Judge Randall found that the patient credibly testified that he never lied to Respondent in order to obtain more prescriptions. Seventh, Respondent resumed prescribing controlled substances to a patient after he completed drug detoxification treatment. According to Respondent, he evaluated the patient and determined that he still suffered from chronic pain and needed the medication. Finally, one of Respondent's patients was hospitalized for an amphetamine overdose. Respondent's expert testified that this was a ''big red flag'' but if the patient had chronic pain, she was entitled to relief.

The concerns of the Government's expert have been discussed generally above. The Government's expert expressed specific concerns regarding each of the patients. Most notable is the expert's disagreement with Respondent's continued prescribing of acetaminophen-based products to a patient who developed hepatitis. In fact, Respondent's expert indicated that he would have altered the prescriptions for this patient once it was learned that she had hepatitis.

As discussed above, one of Respondent's experts found that Respondent's patient chart were lacking details regarding his initial evaluation and diagnosis, however the expert found Respondent's treatment reasonable and prescribing appropriate.

The expert found that the prescribing of a combination of drugs at the same time is appropriate because each drug has specific indications. The expert also opined that prescribing beyond the recommended doses found in the Physician's Desk Reference (PDR) is not acting outside the standard of care because the PDR is merely a guide.

A number of Respondent's patients testified at the hearing in this matter. In addition, Respondent introduced letters from 99 of Respondent's patients. Essentially, these patients indicated that before seeing Respondent they could not function due to their chronic pain. Some indicated that they had been to other doctors but nothing worked to relieve them of their pain. However, they all indicated that due to Respondent's treatment, including the prescribed medications, their level of comfort has increased and their quality of life has improved. Some indicated that they were now able to work full-time and others indicated that they were able to participate in family activities and life in general. Several of the patients indicated that they had stopped taking medications for a period of time, but the pain was intolerable and they had to resume taking narcotics prescribed by Respondent. One patient indicated that it was his goal to ultimately be drug-free, but he does not want to be drug-free and disabled. Regarding the combination of prescriptions issued by Respondent, a number of the patients stated that they take different drugs depending on the severity of the pain and never take the drugs simultaneously. In addition, a number of patients indicated that Respondent did not tell them to take their prescriptions to different pharmacies to avoid suspicion. In fact, Respondent encouraged them to establish a relationship with one pharmacy and take all of their prescriptions to that pharmacy to be filled.

The Government also introduced into evidence at the hearing the testimony of two pharmacists and statements from 13 other pharmacists regarding their concerns about Respondent's controlled substance prescribing. One pharmacist testified that Respondent's prescribing placed the health and overall well-being of his patients at risk. He was concerned about the number of prescriptions issued by Respondent, the frequency of the prescriptions and the toxicity associated with taking those prescriptions. He further testified that he filled the prescriptions of other physicians who treat chronic pain, but they did not write as many controlled substance prescriptions as Respondent. He also indicated that when he expressed his concerns to Respondent regarding prescriptions issued to three patients who lived together, Respondent ''basically * * * told me that he was the doctor, I was the pharmacist. * * * He was very flippant about the way that he told me off, basically just to mind my own business, that I had no reason to be calling him.'' The other pharmacist testified that he had concerns regarding some of Respondent's prescriptions; that he contacted Respondent regarding these concerns; but that he never refused to fill any of Respondent's prescriptions.

As to 10 of the pharmacists' statements, the Deputy Administrator agrees with Judge Randall's finding that they were ''(1) lacking in foundational information about the declarants' credentials, (2) so lacking in factual specificity about the events related, and (3) so vague as to what was said to the Respondent and what he replied, that, without the declarants' testimony and opportunity for cross-examination, . . . these statements [are] worth very little weight in this matter.''

The other three pharmacists' statements also lacked foundational information about the pharmacists' credentials other than that they were licensed at some point. One pharmacist expressed general concerns about three specific patients and that these concerns were raised with Respondent. However there was no information in this statement as to when these concerns were raised with Respondent and what specifically Respondent was told about the patients' behavior at the pharmacy. Another pharmacist indicated that he no longer fills Respondent's prescriptions, but he also indicated that he never called Respondent to voice his concerns. This pharmacist also named a specific patient however there was no other evidence presented linking this patient to Respondent. The third pharmacist described his experiences with a specifically named patient, however there was no evidence linking the behavior of this patient with conduct by Respondent. As with the other statements, Judge Randall concluded and the Deputy Administrator agrees that these statements are entitled to little weight.

Respondent testified at the hearing about the pharmacists' concerns stating that, ''The captain of the ship is the physician, the buck stops here. I'm the ultimate individual because I'm the individual who prescribes the medication. Therefore, I take into consideration what the pharmacist says, but it's my responsibility to prescribe the medication.''

Respondent acknowledged at the hearing that between December 1993 and September 1995, he had ordered multiple dosage units of controlled substances that he either took himself or gave to family members for their documented medical conditions, or that were to be used for emergency situations in his office.

Respondent admitted at the hearing that in 1995 he had not maintained a complete and accurate record in a formal log of controlled substances he dispensed in his office, and that he had not taken a biennial inventory of controlled substances prior to November 1995. However, Respondent introduced evidence at the hearing that in December 1995, he began maintaining a log which reflects his controlled substance dispensing, and he also introduced a copy of his in-office inventory of controlled substances as of January 2, 1996.

A former member of the Utah medical examining board who was also the president of the state osteopathic association from 1984 to 1991, testified that he has known Respondent since 1974; that Respondent has a reputation in the medical community as being skilled in the practice of osteopathic medicine; that he has referred his patients to Respondent for treatment; that it is appropriate for a physician to maintain controlled substances in his office for treating family members; and that Respondent's professional charges were reasonable within thee osteopathic community.

Respondent testified at the hearing that between 1994 and 1997, he took three courses on pain management which consisted of guest lectures ''who were considered 'authorities' in the pain treatment and how these individuals managed their chronic intractable pain patients.''

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422 (1989).

It is the Government's position that factors two, four and five apply in this case. Because of his failure to keep proper records, Respondent was unable to account for large quantities of drugs that he had ordered. He prescribed large quantities of controlled substances to individuals who he knew or should have known abused the drugs. In addition, he prescribed controlled substances to patients without adequate justification for the prescribing. Respondent ignored the concerns of pharmacists and other health care professionals thereby threatening his patients' health and safety. The Government further argued that Respondent violated state law by prescribing controlled substances for family members and by prescribing anabolic steroids for muscle enhancement. It is the Government's position that Respondent's cavalier attitude towards the handling of controlled substances places his patients at risk.

Conversely, Respondent contends that the Government has failed to establish a factual basis for the revocation of his DEA registration. It is Respondent's position that there were problems with the Government's investigation and that the Government's expert was not provided adequate information in order to render a meaningful opinion regarding Respondent's treatment of his patients. The Government took 38 out of over 500 patients charts and then only had its expert review 18 of the charts. The pharmacists' statements were too general to be used against him. Also, the Government failed to link any patient abuse of the prescriptions to any conduct, or lack thereof, by Respondent. It is Respondent's position that he prescribed controlled substances to his patients for legitimate medical purposes and that his failure to maintain records in the form prescribed by DEA does not warrant revocation in this case. Respondent contends that his medical practices pose no danger to the public health and safety, but that his patients will be in danger if his registration is revoked and they can no longer obtain controlled substances to enable them to continue functioning as productively as possible.

Regarding factor one, there is no evidence in the record that the state licensing board has taken any action against Respondent's license to practice medicine or handle controlled substances. Likewise regarding factor three, there is no evidence in the record that Respondent has been convicted of any controlled substance related offense.

However, factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, are relevant in determining whether Respondent's continued registration is in the public interest. Pursuant to 21 CFR 1306.04, prescriptions for controlled substances must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

The Government alleged that Respondent's prescribing to the patients at issue in this proceeding, as well as to his family members was not for a legitimate medical purpose. First, in support of its position the Government argued that Respondent's prescribing exceeded the recommended amounts and length of time set forth in the PDR. However, DEA has previously held that the PDR is not binding on a physician. *See Margaret E. Sarver, M.D.,* 61 FR 57,896 (1996). The Deputy Administrator agrees with Judge Randall's conclusion that exceeding the recommendations in the PDR may warrant further investigation but it does not, in and of itself, make the prescriptions not legitimate.

Second, the Government contended that there was inadequate diagnosis and evaluation to justify Respondent's prescribing of controlled substances. According to the Government's expert, there was insufficient information in the patient charts to warrant the prescriptions and Respondent did not refer the patients to specialists. One of Respondent's experts agreed with the Government's expert testifying that in his opinion the patient charts were lacking in detail regarding Respondent's initial evaluation and diagnosis, and on two occasions he would have referred the patients to specialists. But Respondent's expert also testified that subsequent entries in the patient charts were sufficient and that Respondent did refer other patients to specialists. Judge Randall concluded and the Deputy Administrator agrees that based upon a review of the patient charts, as well as, Respondent's testimony, the patients' testimony and statements, the experts' testimony, and reports from specialists found in the charts, the preponderance of the evidence supports a conclusion that the prescribing was justified.

Third, the Government argued that Respondent failed to reduce the dosage levels prescribed and that his prescribing was not responsive to the patients' medical conditions. All of the experts testified that there is no upper limit on the use of narcotics in the treatment of chronic pain. Respondent's experts testified that dosage levels should not be reduced so long as the amount of drugs prescribed are effectively managing the patient's pain; that Respondent's prescribing was responsive to the patients' medical conditions; and that the amount of pills prescribed alone should not be the test for determining whether the prescriptions are legitimate. Rather, one should look at whether the amount of drugs prescribed are enabling the patient to function. Respondent monitored his patients' use of controlled substances by seeing them at least monthly, and according to Respondent none of his patients were over-medicated. There is no evidence in the record that any of Respondent's patients were addicts. The term ''addict'' is defined in 21 U.S.C. 802(1) to mean, ''any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.'' To the contrary, Respondent's patients testified and/or submitted statements indicating that because of Respondent's treatment they are able to be functioning members of society.

Fourth, the Government argued that Respondent improperly prescribed controlled substances to patients who had recently completed substance abuse treatment. But, the Government witness and the Consensus Statement both indicated that it is not illegal to prescribe narcotics to these patients, but that a physician should use extra caution in so prescribing. The record indicates that Respondent evaluated these patients and determined that they still suffered from chronic pain requiring narcotics. Respondent monitored these patients' use of controlled substances.

Fifth, the Government contended that Respondent improperly prescribed controlled substances to family members. However, there is no evidence that it is illegal to do so.

Finally, the Government argued that Respondent improperly prescribed similar controlled substances simultaneously. But Respondent testified that he uses the stepladder approach to prescribing controlled substances. Therefore, he may prescribe a relatively weak opiate and a stronger opiate so that he patient can take the medication that correlates with his/her level of pain. Respondent's experts testified that this approach to prescribing meets the standard of care followed by the therapeutic school in the treatment of chronic pain. Different drugs work differently for different people, and since pain is subjective, the physician has to trust his patients.

The Government questioned the trustworthiness of a number of Respondent's patients, including one who indicated that he lost prescriptions; two who shared their drugs with others; those who went to other doctors at the same time that they were being treated by Respondent; and one whose spouse indicated that he faked pain to get prescriptions. However, Respondent investigated the claims, discussed the claims with the patients, made judgments as to whether or not to believe the patients, and carefully monitored any future behavior.

The Deputy Administrator agrees with Judge Randall's conclusion that based upon a review of the patient charts, Respondent's testimony, the patients' testimony and/or statements, and the experts' testimony, the preponderance of the evidence supports a conclusion that Respondent prescribed controlled substances for a legitimate medical purpose.

However, the Deputy Administrator finds that Respondent did prescribe anabolic steroids for muscle enhancement when it was illegal to do so. As Judge Randall stated, ''[t]he Government is legitimately concerned about the Respondent's failure to remain current with the law concerning anabolic steroid prescribing. It is the registrant's responsibility to know the state of the law affecting his profession, and 'I didn't know' does not justify the Respondent's unlawful prescribing of anabolic steroids in 1992.''

In addition at the time of the investigation in this matter, Respondent failed to keep complete and accurate records of his controlled substance handling as required by 21 U.S.C. 287 CFR 1304.04 and 1304.21. However, according to Respondent he has properly maintained the required records since 1995.

As other conduct which may threaten the public health and safety under factor five, the Government asserted that Respondent failed to acknowledge warnings of local pharmacists; failed to obtain information from other physicians treating a patient at the same time as Respondent; failed to alter his prescribing in response to a hospice nurse's concerns; failed to deny controlled substance prescriptions to an individual after he completed drug treatment; and improperly continued to prescribe acetaminophen to a patient after she was diagnosed with hepatitis.

The Deputy Administrator concurs with Judge Randall's conclusion that Respondent's treatment of the patient with hepatitis did place the patient's health at risk. However, the Deputy Administrator also agrees with Judge Randall that the Government's other concerns did not place his patients or the public health and safety at risk. He considered the concerns of the other health care professionals and the fact that a patient had just completed drug treatment in determining the appropriate treatment for a patient. While it may have been prudent for Respondent to contact other physicians who treated his patients, this is not required and no evidence was presented to indicate that the health and safety of his patients or the general public was endangered by his failure to do so.

After reviewing the record in this matter, Judge Randall noted, ''[w]ithout a doubt, the Government had legitimate concerns as a result of its initial investigation of the Respondent and his prescribing practices.'' The Deputy Administrator finds it noteworthy that even one of Respondent's experts testified that Respondent's documentation was lacking and that lack of sufficient documentation places a physician at risk. However, despite the large number of prescriptions issued by Respondent, the pharmacists' concerns, and the evaluation of the Government's expert, the Government has failed to prove by a preponderance of the evidence that Respondent's continued registration would be inconsistent with the public interest. As a result, Judge Randall recommended that no action be taken against Respondent's registration.

In evaluating this case, it is apparent that there is disagreement within the medical community regarding the use of controlled substances in the treatment of chronic pain. As Judge Randall noted, ''DEA is in a difficult position, for it is asked to determine appropriate prescribing practices in a treatment area in which the medical profession is not in accord: the treatment of chronic pain patients.'' However, DEA has previously held that it is not DEA's role to resolve this disagreement. In *William F. Skinner, M.D.,* 60 FR 62,887 (1995), the then-Deputy Administrator found that, ''the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of controlled substances in the treatment of chronic pain patients. * * * It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law.''

Here, the Government's evidence is outweighed by the testimony of Respondent and his experts, the patients' testimony and statements, and the patient charts.

While it is true that Respondent prescribed anabolic steroids for muscle enhancement and did not maintain proper records of his controlled substance handling, revocation of his registration is not warranted. Respondent admitted that his prescribing of anabolic steroids was illegal. However, he ceased such prescribing immediately upon learning that it was illegal and has not prescribed anabolic steroids for muscle enhancement since. Judge Randall stated, ''[a]lthough this corrective action does not justify the Respondent's failure to remain current in the law, * * * his actions show his desire and willingness to comply with the law in the prescribing of controlled substances.''

Respondent also clearly did not maintain adequate controlled substances records, but he accepted responsibility for his inadequate recordkeeping and now maintains complete and accurate records. Here Judge Randall stated, ''[a]gain, the Respondent's remedial efforts do not justify his prior failure to comply with record-keeping requirements, but such efforts do demonstrate that the DEA has certainly acquired this Respondent's attention. His response has been to take affirmative action to correct his prior mistakes.''

The Deputy Administrator finds it significant that Respondent has taken several courses since the investigation of his practice concerning pain management and handling controlled substances. As Judge Randall noted, ''although such remedial actions do not justify the Respondent's prior lack of knowledge, it does demonstrate his sincerity in updating his credentials, consistent with his current medical practice.''

The Deputy Administrator agrees with Judge Randall that based upon the record as a whole, no adverse action is warranted against Respondent's DEA Certificate of Registration. However, the Deputy Administrator notes that the

treatment of chronic pain patients is a difficult business. Since pain is mainly subjective, physicians must rely heavily on the complaints of patients. Because of this, physicians must be ever vigilant for evidence of diversion of controlled substances for other than legitimate medical purposes.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AS9420059, previously issued to Paul W. Saxton, D.O., be, and it hereby is, continued with no adverse action being taken.

Dated: May 3, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–11580 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 2, 1999, Sigma Aldrich Research Biochemicals, Inc., Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathionone (1237)	I
Aminorex (1585)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2, 5-Dimethoxyamphetamine (7396).	I
3, 4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402).	I
3, 4-Methylenedioxymethamphetamine (7405).	I
1- [1- (2-Thienyl) cyclohexyl] piperidine (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
levo-alphacetylmethadol (9648)	II
Fentanyl (9801)	II

The firm plans to manufacturer the listed controlled substances for laboratory reference standards and neurochemicals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11692 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

May 5, 1999.

TIME AND DATE: 10:00 a.m., Thursday, May 13, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* versus *Newmont Gold Co.*, Docket Nos. WEST 97–164–RM, etc. (Issues include whether the judge correctly determined that (1) citations should be dismissed based on their failure to state reasonable abatement times and (2) 30 CFR § 56.14107 cannot be applied to require supplementation of factory installed guards on haul trucks, and that the exception is subsection (b) applied.)

TIME AND DATE: The meeting will commence following upon the conclusion of oral argument in the case which commences at 10:00 a.m. on Thursday, May 13, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* versus *Newmont Gold Co.*, Docket Nos. WEST 97–164–RM, etc. (*See* oral argument listing, *supra*, for issues.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2796.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll-free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 99–11890 Filed 5–6–99; 3:58 pm]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel, International section, to the National Council on the Arts will be held on May 19, 1999. The panel will meet from 8:15 a.m. to 9:00 a.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications and proposals for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection

(c)(4), (6) and (9)(B) of section 552b of Title 5, United States code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: May 4, 1999.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 99–11636 Filed 5–7–99; 8:45 am]

BILLING CODE 7537–01–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 (#1757);

Date & Time: May 21, 1999; 8:30 a.m.–5:00 p.m.

Room: 950.

Contact Person: Dr. John Yellen, Program Director for Archaeology, Archaeometry & Systematic Collections Program, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate Instrumentation proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

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: May 4, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11626 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; 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 Biological Sciences (#1754).

Date and Time: May 24th & 25th, 8:00 a.m.–5:00 p.m.

Place: Natioal Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. William Gordon, Program Director, Research Experiences for Undergraduates, Room 615, National Science Foundation, 4201 Wilson Boulevard, VA 22230.

Telephone: (703) 306–1469.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the Research. Experiences for Undergraduates program announcement (NSF 96–102).

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: May 4, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11625 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; 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 and Committee Code: Special Emphasis Panel in Human Resource Development (#1199)

Date and Time: May 24–25, 1999: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Costello Brown, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1640.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Minority Graduate Education 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: May 4, 1999.

Linda Allen-Benton,

Acting Division Director, Division of Human Resource Management.

[FR Doc. 99–11627 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; 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 and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: May 27–28, 1999: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Jesse Lewis, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for continuation of financial support.

Agenda; Review for the Centers of Research and Excellence in Science and Technology Reverse Site Visit.

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: May 4, 1999.

Linda Allen-Benton,

Acting Division Director, Division of Human Resource Management.

[FR Doc. 99–11628 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters''.

3. The form number if applicable: NRC Form 241.

4. How often the collection is required: NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a person engaging in activities under the general license.

5. Who will be required or asked to report: Any persons who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

6. An estimate of the number of responses: The NRC annually receives approximately 4600 responses from Agreement States associated with NRC Form 241. These responses include 200 initial reciprocity requests on NRC Form 241, and 1100 revisions and 3300 clarifications of the information submitted on the forms.

7. The estimated number of annual respondents: 200 respondents.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 1200 hours.

9. An indication of whether Section 3507(d), Public Law 104–13 applies:

10. Abstract: Under the reciprocity provisions of 10 CFR part 150, any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in Section 150.20, is required to file four copies of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters,'' and four copies of its Agreement State license at least 3 days before engaging in each such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 9, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0013), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11672 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Registration Certificate—*in vitro* Testing with Byproduct Material Under General License.

3. *The form number if applicable:* NRC Form 483.

4. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

5. *Who will be required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

6. *An estimate of the number of responses:* 364 (104 registration certificates from NRC licensees and 260 registration certificates from Agreement State licensees).

7. *The estimated number of annual respondents:* 364 (104 NRC licensees and 260 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 42 hours, 7 minutes per response.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory,

veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 9, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0038), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11673 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection: Exercise of Discretion for an Operating Facility, NRC Enforcement Policy (NUREG–1600).
3. The form number if applicable: Not applicable.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: Nuclear power reactor licensees and gaseous diffusion plant certificate holders.
6. An estimate of the number of responses: 38 annually.
7. The estimated number of annual respondents: 38.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 2,280.
9. An indication of whether section 3507(d), Pub. L. 104–13 applies: Not applicable.
10. Abstract: The NRC's revised Enforcement Policy includes the circumstances in which the NRC may exercise enforcement discretion. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a nuclear power plant licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other certificate condition would unnecessarily call for a total plant shutdown, or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

A licensee or certificate holder seeking the issuance of a NOED must provide a written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 9, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0136), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11675 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–067]

In the Matter of Sheila N. Burns; Order Prohibiting Involvement in NRC–Licensed Activities (Effective Immediately)

I

Sheila N. Burns was employed as a radiographer's assistant by International Radiography and Inspection Services, Inc. (IRIS or Licensee), Tulsa, Oklahoma. IRIS holds License No. 35-30246–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34. The license authorizes IRIS to possess and utilize sealed radiation sources in the performance of industrial radiography in accordance with the conditions specified in the license.

II

On November 7, 1998, Ms. Burns and another IRIS employee were performing radiography at Sagebrush Pipeline Equipment Company in Sapulpa, Oklahoma, using a radiographic exposure device (camera) containing approximately 87 curies of iridium-192. Ms. Burns was the radiographer's assistant on this job; the other IRIS employee was a radiographer. In accordance with 10 CFR 34.46, the radiographer's assistant was required to be under the personal supervision of the radiographer when using the radiographic exposure device or performing radiation surveys.

On November 9, 1998, the radiation safety officer for IRIS notified the NRC Operations Center in Rockville, Maryland, of an incident that occurred on November 7, 1998, involving Ms. Burns and the radiographer. The incident resulted in a radiation exposure to Ms. Burns in excess of the annual limit in 10 CFR 20.1201.

The NRC conducted an inspection and investigation to review the circumstances surrounding this incident, and identified numerous apparent violations of radiation safety requirements associated with this incident, many of which were committed deliberately. The results of the NRC investigation were described in an investigation report issued on January 5, 1999. The results of the inspection were described in an inspection report issued on March 3, 1999. On January 25, February 4, and March 18, 1999, respectively, the NRC conducted separate predecisional enforcement conferences with Ms. Burns, the radiographer, and IRIS representatives. The conferences were conducted to discuss the apparent violations and to assist the NRC in reaching enforcement decisions in this matter.

With respect to Ms. Burns, the NRC has determined that she engaged in the following acts of deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused IRIS to be in willful violation of regulatory requirements by: (1) Knowingly conducting radiography at a site at which there was no radiation survey instrument, contrary to the requirements of 10 CFR 34.25(a); (2) knowingly conducting radiography without performing radiation surveys each time the radiographic source was returned to its shielded position following an exposure, contrary to the requirements of 10 CFR 34.49(b); and (3) knowingly conducting radiography without wearing all required personal radiation monitoring equipment, contrary to the requirements of 10 CFR 34.47(a). In addition, Ms. Burns knowingly provided false and misleading information to IRIS's radiation safety officer following the incident, contrary to the requirements of 10 CFR 30.10(a)(2). With regard to the latter violation, Ms. Burns knowingly provided IRIS officials with false information which was intended to cause them to believe that the radiographer was in the restroom at the time of the exposure incident, that she and the radiographer had followed radiation safety requirements regarding the use of radiation survey instruments and personal dosimetry, that she had inadvertently used a faulty alarm ratemeter that night, and that she and the radiographer had halted radiography work following her pocket dosimeter going off-scale.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Ms. Burns' deliberate misconduct, which caused IRIS to violate the Commission's regulations and resulted in a radiation exposure in excess of the annual limit in 10 CFR 20.1201, and her misrepresentations to IRIS officials, have raised serious doubt as to whether she can be relied upon to comply with NRC requirements, and to provide complete and accurate information to the NRC and its licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities will be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Sheila N. Burns were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Sheila N. Burns be prohibited from any involvement in NRC-licensed activities for a period of 3 years from the date of this Order. Additionally, Sheila N. Burns is required to notify the NRC of her first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Sheila N. Burns's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *It is Hereby Ordered,* Effective Immediately, That:

1. Sheila N. Burns is prohibited for 3 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Sheila N. Burns is currently involved with another licensee in NRC-licensed activities, she must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 3 years after the 3-year period of prohibition has expired, Sheila N. Burns shall, within 20 days of her acceptance of each employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in NRC-licensed activities. In the first notification Ms. Burns shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Sheila N. Burns of good cause.

V

In accordance with 10 CFR 2.202, Ms. Burns must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny

each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Burns or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Ms. Burns if the answer or hearing request is by a person other than Ms. Burns. If a person other than Ms. Burns requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Burns or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Burns may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–11670 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 99–002]

In the Matter of James S. Dawson; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

James S. Dawson was employed as a radiographer by International Radiography and Inspection Services, Inc. (IRIS or Licensee), Tulsa, Oklahoma. IRIS holds License No. 35–30246–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34. The license authorizes IRIS to possess and utilize sealed radiation sources in the performance of industrial radiography in accordance with the conditions specified in the license.

II

On November 7, 1998, Mr. Dawson and another IRIS employee were performing radiography at Sagebrush Pipeline Equipment Company in Sapulpa, Oklahoma, using a radiographic exposure device (camera) containing approximately 87 curies of iridium-192. Mr. Dawson was the radiographer on this job; the other IRIS employee was a radiographer's assistant. In accordance with 10 CFR 34.46, the radiographer's assistant was required to be under the personal supervision of Mr. Dawson when using the radiographic exposure device or performing radiation surveys. Thus, Mr. Dawson was responsible for assuring that certain NRC-licensed activities carried out by the radiographer's assistant were being performed appropriately and in compliance with NRC requirements.

On November 9, 1998, the radiation safety officer for IRIS notified the NRC Operations Center in Rockville, Maryland, of an incident that occurred on November 7, 1998 involving Mr. Dawson and the radiographer's assistant. The incident resulted in a radiation exposure to the radiographer's assistant in excess of the annual limit in 10 CFR 20.1201.

The NRC conducted an inspection and investigation to review the circumstances surrounding this incident, and identified numerous apparent violations of radiation safety requirements associated with this incident, many of which were committed deliberately. The results of the NRC investigation were described in an investigation report issued on January 5, 1999. The results of the inspection were described in an inspection report issued on March 3, 1999. On January 25, February 4, and March 18, 1999, respectively, the NRC conducted separate predecisional enforcement conferences with the radiographer's assistant, Mr. Dawson, and IRIS representatives. The conferences were conducted to discuss the apparent violations and to assist the NRC in reaching enforcement decisions in this matter.

With respect to Mr. Dawson, the NRC has determined that he engaged in the following acts of deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused IRIS to be in willful violation of regulatory requirements by: (1) Knowingly conducting radiography at a site at which there was no radiation survey instrument, contrary to the requirements of 10 CFR 34.25(a); (2) knowingly conducting radiography without performing radiation surveys each time the radiographic source was returned to its shielded position following an exposure, contrary to the requirements of 10 CFR 34.49(b); (3) knowingly conducting radiography without wearing all of the required personal radiation monitoring equipment, contrary to the requirements of 10 CFR 34.47(a); (4) knowingly permitting the radiographer's assistant to resume work associated with licensed material after the radiographer's assistant's pocket dosimeter went off-scale and before a determination of the radiographer's assistant's radiation exposure had been made, contrary to the requirements of 10 CFR 34.47(d); and (5) knowingly failing to immediately contact the IRIS radiation safety officer after the radiographer's assistant's pocket dosimeter went off-scale, contrary to the requirements of IRIS's operating and emergency procedures (i.e., Item 3.1.2.1 IRIS' Radiation Safety Manual). In addition, Mr. Dawson knowingly provided false and misleading information to IRIS's radiation safety officer following the incident, contrary to the requirements of 10 CFR 30.10(a)(2). With regard to the latter violation, Mr. Dawson knowingly provided IRIS officials with false information which was intended to cause them to believe that Mr. Dawson was in the restroom at the time of the exposure incident, that he and the radiographer's assistant had followed radiation safety requirements regarding the use of radiation survey instruments and personal dosimetry, and that he had halted radiography work following the radiographer's assistant's pocket dosimeter going off-scale.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Dawson's deliberate misconduct, which caused IRIS to violate the Commission's regulations and resulted in a radiation exposure to the radiographer's assistant in excess of the annual limit in 10 CFR 20.1201, and his misrepresentations to IRIS officials, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements, and to provide complete and accurate information to the NRC and its licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities will be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if James S. Dawson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that James S. Dawson be prohibited from any involvement in NRC-licensed activities for a period of 5 years from the date of this Order. Additionally, James S. Dawson is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of James S. Dawson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered*, effective immediately, that:

1. . James S. Dawson is prohibited for 5 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If James S. Dawson is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 5 years after the 5-year period of prohibition has expired, James S. Dawson shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the first notification Mr. Dawson shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by James S. Dawson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Dawson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Dawson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Dawson if the answer or hearing request is by a person other than Mr. Dawson. If a person other than Mr. Dawson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Dawson or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Dawson may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–11671 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company, et al.; Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License (FOL) Nos. NPF–87 and No. NPF–89 issued to Texas Utilities Electric Company, et al. (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively,

located at site in Somervell County, Texas.

The proposed amendments would change the FOL for Unit 2 and the Technical Specifications for Units 1 and 2 to reflect an increase in allowable thermal power to 3445 megawatts (thermal), an increase of approximately 1 percent.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 9, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated December 21, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 3rd day of May 1999.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11676 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting of the Interagency Steering Committee on Radiation Standards

AGENCIES: Nuclear Regulatory Commission and Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on June 10, 1999, in Rockville, Maryland. The purpose of ISCORS is to foster early resolution and coordination of

regulatory issues associated with radiation standards.

Agencies represented on ISCORS include the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, the U.S. Department of Health and Human Services, and any successor agencies. The Office of Science and Technology Policy, the Office of Management and Budget, and a State representative are observers at meetings.

The objectives of ISCORS are to: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution.

ISCORS meetings include presentations by the chairs of the subcommittees and discussion of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. However, for the June 10 meeting, all interested members of the public are invited to attend.

DATES: The meeting will be held from 1 p.m. to 4 p.m. on Thursday, June 10, 1999.

ADDRESSES: The meeting will be held in the NRC auditorium, at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

Summaries of previous ISCORS meetings are available at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

FOR FURTHER INFORMATION, CONTACT: Patricia A. Santiago, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–7269; fax 301–415–5398; E-mail pas2@NRC.GOV.

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Metro Station on the Red Line. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, MD, this 26th day of April 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11674 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Thursday, May 6, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, May 6

9:00 a.m.—Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Glenn Tracy, 301–415–1725).

*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.

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, D.C. 20555 (301–415–1963).

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.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary, 5/5/99.

[FR Doc. 99–11795 Filed 5–6–99; 12:10 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–2(e); SEC File No. 270–37; OMB Control No. 3235–0031

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemption from the fingerprinting requirements of Rule 17f–2 to prepare and maintain a statement supporting their claim for exemption. Approximately 75 respondents incur an annual total burden of 37.5 hours complying with the requirements of Rule 17f–2(e).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Officer of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: April 28, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11601 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23824; 812–11566]

Warburg Pincus Asset Management, Inc., et al.; Notice of Application

May 5, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without prior shareholder approval, of certain advisory and sub-advisory agreements in connection with the acquisition (''Acquisition'') of Warburg Pincus Asset Management Holdings, Inc. (''Warburg Holdings'') by Credit Suisse Group (''Credit Suisse''). The order would cover a period of up to 150 days following the later of: (i) The date on which the Acquisition is consummated (the ''Acquisition Date''), or (ii) the date on which the requested order is issued (but in no event later than December 31, 1999). The order also would permit the payment of all fees earned under the new advisory agreements during this period following shareholder approval.

APPLICANTS: Warburg Pincus Asset Management, Inc. (''Warburg''), Credit Suisse Asset Management (''CSAM–U.S.''), Abbott Capital Management, LLC (''Abbott'') and Blackrock Institutional Management Corporation (''Blackrock'') (collectively, the ''Advisers'').

FILING DATES: The application was filed on April 7, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 May 27, 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 by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Warburg, 466 Lexington Avenue, New York, NY 10017. CSAM–U.S., One Citicorp Center, 153 East 53rd Street, New York, NY 10022. Abbott, 50 Rowes Wharf, Suite 240, Boston, MA 02110–3328. Blackrock, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Warburg, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). Abbott, a Delaware limited liability company, is an investment adviser registered under the Advisers Act. Blackrock, a Delaware corporation, is an investment adviser registered under the Advisers Act. Warburg is a wholly-owned subsidiary of Warburg Holdings.

2. Warburg serves as the adviser or sub-adviser to various management investment companies registered under the Act (''Funds'').[1] Abbott serves as sub-adviser to four of the Funds, Warburg, Pincus Global Post-Venture Capital Fund, Inc., Warburg, Pincus Post-Venture Capital Fund, Inc., and the Post-Venture Capital Portfolios of Warburg, Pincus Institutional Fund, Inc., and Warburg, Pincus Trust. Blackrock serves as a sub-adviser to four of the Funds, but is seeking relief only with respect to two Funds, Warburg, Pincus WorldPerks Money Market Fund, Inc. and Warburg, Pincus WorldPerks Tax Free Money Market Fund, Inc. The advisory and sub-advisory agreements currently in effect between the Advisers and the Funds are each referred to as an ''Existing Advisory Agreement'' and collectively, as the ''Existing Advisory Agreements.''

3. On February 15, 1999, Warburg Holdings entered into an acquisition agreement with Credit Suisse, under which Warburg Holdings will be acquired by Credit Suisse. Credit Suisse, a Switzerland corporation, is a global financial services company. Applicants expect the Acquisition to be consummated in June 1999. Upon consummation of the Acquisition, Credit Suisse intends to combine Warburg with CSAM–U.S. (the ''Reorganization''). Such combined businesses are expected to be conducted by CSAM–U.S. as a wholly-owned U.S. subsidiary of Credit Suisse (the ''New Adviser''). The Reorganization is expected to occur simultaneously with the Acquisition. CSAM–U.S. is registered as an investment adviser under the Advisers Act. New Adviser will succeed to CSAM–U.S.'s registration under the Advisers Act after the Reeorganization.

4. Applicants state that the Acquisition will result in an assignment and thus the automatic termination of the Existing Advisory Agreements. Applicants also state that the Reorganization may be deemed an assignment of each Fund's Existing Advisory Agreements if it does not occur simultaneously with the Acquisition. Applicants requests an exemption to permit the implementation, without prior shareholder approval, of new advisory and sub-advisory agreements with respect to the Funds (''New Advisory Agreements''). The requested exemption will cover the period of not more than 150 days beginning on the later of the Acquisition Date or the date of the issuance of the requested order and continuing with respect to each Fund through the date on which each New Advisory Agreement is approved or disapproved by the Fund's shareholders, but in no event later than December 31, 1999 (''Interim Period''). Applicants represent that the New Advisory Agreements will contain

[1] Warburg serves as the adviser to the following funds: Warburg, Pincus Balanced Fund, Inc., Warburg, Pincus Capital Appreciation Fund, Warburg, Pincus Cash Reserve Fund, Inc., Warburg, Pincus Emerging Growth Fund, Inc., Warburg, Pincus Emerging Markets Fund, Inc., Warburg, Pincus Fixed Income Fund, Warburg, Pincus Global Fixed Income Fund, Inc., Warburg, Pincus Global Post-Venture Capital Fund, Inc., Warburg, Pincus Growth & Income Fund, Inc., Warburg, Pincus Health Sciences Fund, Inc., Warburg, Pincus Institutional Fund, Inc., Warburg, Pincus Intermediate Maturity Government Fund, Inc., Warburg, Pincus International Equity Fund, Inc., Warburg, Pincus International Small Company Fund, Inc., Warburg, Pincus Japan Growth Fund, Inc., Warburg, Pincus Japan Small Company Fund, Inc. Warburg, Pincus Major Foreign Markets Fund, Inc., Warburg, Pincus New York Intermediate Municipal Bond Fund, Inc., Warburg, Pincus New York Tax Exempt Fund, Inc., Warburg, Pincus Post-Venture Capital Funds, Inc., Warburg, Pincus Small Company Growth Fund, Inc., Warburg, Pincus Small Company Value Fund, Inc., Warburg, Pincus Trust, Warburg, Pincus Trust II, Warburg, Pincus WorldPerks Money Market Fund, Inc., and Warburg, Pincus WorldPerks Tax Free Money Market Fund, Inc. Warburg serves as a sub-adviser to the Growth and Income Portfolio of the Variable Investors Series Trust, the International Growth Fund of WM Trust II, and the International Growth Fund of the WM Variable Trust.

substantially the same terms and conditions as the Existing Advisory Agreements, except in each case for the effective and the termination dates. Applicants further represent that each Fund will receive, during the Interim Period, the same scope and quality of investment advisory services, provided in the same manner by substantially the same personnel, at the same fee levels as it received prior to the Acquisition.

5. Applicants state that the board of directors of each Fund (the ''Board'') will meet prior to the Acquisition Date to consider approval of the New Advisory Agreements and submission of the New Advisory Agreements to the shareholders for their approval, in accordance with section 15(c) of the Act.[2] Applicants state that the Board will evaluate whether the terms of the New Advisory Agreements are in the best interests of the Funds and their shareholders.

6. Applicants submit that it will not be possible to obtain shareholder approval of the New Advisory Agreements in accordance with section 15(a) of the Act prior to the Acquisition Date. Applicants state that each Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Advisory Agreements to be held during the Interim Period.

7. Applicants also request an exemption to permit the Advisers to receive from each Fund all fees earned under the New Advisory Agreements during the Interim Period, if and to the extent the New Advisory Agreements are approved by the shareholders of each Fund.[3] Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution (the ''Escrow Agent''). Advisory fees payable by the Funds to the Advisers under the New Advisory Agreements during the Interim Period will be paid into an interest-bearing escrow account maintained by the Escrow Agent. The amounts in the Escrow account (including interest earned on such paid fees) will be paid to the Advisers only after the New Advisory Agreements are approved by the shareholders of the relevant Fund in accordance with section 15(a) of the Act. If shareholder approval is not obtained and the Interim Period has ended, the Escrow Agent will return the escrow amounts to the appropriate Fund. Before the release of any such escrow amounts, the Boards will be notified.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) of the Act further requires that such written contract provide for its automatic termination in the event of its ''assignment.'' Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of an investment advisory or investment sub-advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that the Acquisition will result in an assignment of the Existing Advisory Agreements and the Existing Advisory Agreements will terminate by their own terms. Applicants further state that if the Reorganization occurs after the Acquisition, the then-existing advisory agreements will be transferred to the New Adviser, which could be deemed to constitute an assignment of those agreements.

3. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that they cannot rely on rule 15a–4 because of the benefits to Warburg arising from the Acquisition.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Acquisition were determined in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants state that it may not be possible for the Funds to obtain shareholder approval of the New Advisory Agreements prior to the Acquisition Date. Applicants submit that the Boards will meet to approve the New Advisory Agreements prior to the Acquisition Date, in accordance with section 15(c) under the Act.

6. Applicants submit that the Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent to the scope and quality of services previously provided. During the Interim Period, the Advisers will operated under the New Advisory Agreements, which will be substantially the same as the respective Existing Advisory Agreements, except for the effective and the termination dates. Applicants state that the fees to be paid during the Interim Period will not be greater than the fees currently paid by the Funds. Applicants also assert that allowing the implementation of the New Advisory Agreements will ensure that there will be no disruption to the investment program and the delivery of related services to the Funds.

Applicant's Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreements will contain substantially the same terms and conditions as the Existing Advisory Agreements, except for the dates of execution and termination.

2. The portion of the advisory fees earned by the Advisers during the Interim Period will be maintained in an interest-bearing escrow account (including interest earned on such amounts), and amounts in the account will be paid: (a) To the applicable Adviser after the requisite approval of each New Advisory Agreement by the relevant Fund's shareholders is obtained; or (b) in the absence of such

[2] Applicants acknowledge that, to the extent that the Board of any Fund cannot meet to approve a New Advisory Agreement prior to the Acquisition Date, such Fund may not rely on the exemptive relief requested in this application.

[3] Applicants state that if the Acquisition Date precedes issuance of the requested order, the Advisers will continue to serve as Advisers after the Acquisition Date (and prior to the issuance of the order) in a manner consistent with their fiduciary duty to continue to provide advisory services to the Funds even though approval of the New Advisory Agreements has not yet been secured from the Funds' shareholders. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket costs to the Advisers for providing advisory services.

approval by the end of the Interim Period, to the Fund.

3. Each Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Advisory Agreements to be held during the Interim Period.

4. Warburg will pay the costs of preparing and filing the application, and Warburg and Credit Suisse will pay the costs relating to the solicitation and approval of the Funds' shareholders of the New Advisory Agreements.

5. The Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds by the Advisers during the Interim Period will be at least equivalent, in the judgment of the respective Boards, including a majority of the directors who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Disinterested Directors''), to the scope and quality of services currently provided under the Existing Advisory Agreements. In the event of any material change in the personnel providing services pursuant to the New Advisory Agreements, the Advisers will apprise and consult with the relevant Fund's Board to ensure that the Boards, including a majority of the Disinterested Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11691 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41357; File No. SR–CBOE–99–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on the Dow Jones High Yield Select 10 Index and RAES Order Size

April 30, 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 10, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. 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 Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to increase the maximum size of orders on the Dow Jones High Yield Select 10 Index (''index''), from 20 to 100 contracts, eligible for entry into CBOE's Retail Automated Execution System (''RAES'').

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 CBOE included statements concerning the propose 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add an interpretation of Rule 6.8 to allow the appropriate Floor Procedure Committee (''FPC'') to increase the maximum size of option orders on the Dow Jones High Yield Select 10 Index (''Index''), from 20 to 100 contracts, eligible for execution through RAES. The Exchange expects this change to enhance the depth and liquidity of the market for options on the Index.

In adopting the new RAES rule applicable to options on the Index, the appropriate FPC will have the discretion to set the eligible order size for RAES orders up to one hundred (100) contracts. The Exchange believes that expanding the eligible contract limit size for RAES will provide the benefits of more timely and cost-effective executions of customer orders to a greater number of orders than would be the case if no change were made; enhance information gathering through the audit trail; enhance fill reporting and price reporting; increase customer confidence; and reduce transactions that have to be executed manually on the trading floor thereby increasing the efficiency in the handling of non-RAES orders.

CBOE believes that this proposed rule change will not impose any significant burdens on the operation, security, integrity, or capacity of RAES, but will increase the efficiency of Exchange operations.[3]

By expanding the maximum size of option orders on the Dow Jones High Yield Select 10 Index eligible for entry through RAES from 20 up to 100 contracts, the proposed rule will better serve the needs of the CBOE's public customers and Exchange members who make a market for such customers and is consistent with and furthers the objectives of Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

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 proceeding the 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.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The SEC has approved increasing interest rate option orders up to 100 contracts on RAES, Release No. 34–38002 (December 5, 1996), 61 FR 65422 (December 12, 1996).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 CBOE. All submissions should refer to File No. SR–CBOE–99–06 and should be submitted by June 1, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11597 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41354; File No. SR–NYSE–99–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Exchange's Floor Conduct and Safety Guidelines

April 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1944 [1] (''Act''), and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designed this proposal as one which is concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 its Floor Conduct and Safety Guidelines (''Guidelines'') to require terminated or transferred Floor employees or members to surrender their Exchange-issued identification card (''Floor bage'') to the Exchange's Security Office within five business days of termination. In addition, the proposed rule would require that members and member organizations notify the Security Office of a member's or Floor employee's termination within 24 hours of the termination. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and do not jeopardize the safety or welfare of others.

Exchange rules require all members and Floor employees of members and member organizations to be registered with, and qualified and approved by, the Exchange. When entering and while on the Floor, members and Floor employees of members and member organizations must display their Floor badge at all times.

Currently, Exchange policy requires that the Floor badges of terminated employees must be surrendered to the Exchange's Security Office or to the Exchange's Floor Operations Support Department within five business days of termination of employment.

To ensure that only authorized members and Floor employees may gain access to the Floor (thereby strengthening overall security), the Guidelines will be revised to require that members and member organizations:

- Notify the Security Office of a member's or Floor employee's termination within 24 hours of the termination, and
- Submit the terminated member's or Floor employee's badge to the Security Office within five business days of termination.

The Guidelines will incorporate the requirement for 24-hour notice to and submission of Floor badges directly to the Security Office, with no option to submit badges to the Floor Operations Support Department.

The required 24-hour notification to the Security Office will enable Security staff to deactivate Floor badges electronically, immediately upon notification and prior to the badges actually being surrendered, thereby barring access to the Floor by terminated persons.

Members and member organizations who reassign members or Floor employees to non-Floor functions will be subject to this policy concerning surrender of the Floor badges. In addition to enhancing Floor security, this policy will provide a centralized and more efficient means for accountability of Floor badges.

Failure by members and member organizations to adhere to these Guidelines may result in the imposition of fines (in the amount of $1000) in accordance with the Guidelines.

These proposed revisions to the Guidelines do not affect the existing structure of fines, penalties, and disciplinary actions contained in the Guidelines; nor do they affect the rights of members, member organizations and Floor employees of members and member organizations to appeal, pursuant to existing Exchange rules and procedures, any penalties that are imposed under the Guidelines.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [5] which requires that the rules of the Exchange be designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market. The proposed rule change

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] 15 U.S.C. 78f(b)(5).

supports these goals by promoting the efficient, undisrupted conduct of business on the Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is concerned solely with the administration of the Exchange, and as such, takes effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(3) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 NYSE. All submissions should refer to file number SR–NYSE–99–16, and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11598 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41353; File No. SR–PCX–98–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Differential Index Options

April 30, 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 December 18, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed with the Commission Amendments No. 1[3] and 2[4] to the proposed rule change on April 8, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to trade a standardized index option, the Differential Index Option, whose value at expiration will be based on the relative performance of either a designated index versus a benchmark index, a designated stock versus a benchmark index, or a designated stock versus a benchmark stock.

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 self-regulatory organization 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 self-regulatory organization 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

Proposal. The Exchange is proposing to trade a new type of standardized index option, the Differential Index Option, that will offer new investment and hedging opportunities.[5] Differential Index Options will have a value at expiration based on an index, called the ''differential index,'' that measures the relative performance of (1) A designated index versus a benchmark index over a specific time period (''Index Differential Option''); (2) a designated stock versus a benchmark index over a specific time period (''Equity Differential Option''); or (3) a designated stock versus a benchmark stock over a specific period of time (''Paired Stock Differential Option''). If the percent gain in the level

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael A. Walinskas, Division of Market Regulation, Commission, from Robert P. Pacileo, PCX, dated April 7, 1999 (''Amendment No. 1''). Amendment No. 1 makes certain technical changes to the proposed rule change. Amendment No. 1 also specifies the procedures the Exchange will follow if an underlying differential index previously approved for options trading does not meet the Exchange's requirements for continued approval. In addition, Amendment No. 1 clarifies the conditions under which Exchange Rule 6.11, relating to restrictions on Exchange options transactions and exercises, will be applicable to Differential Index Options.

[4] *See* Letter to Michael A. Walinskas, Division of Market Regulation, Commission, from Robert P. Pacileo, PCX, dated April 7, 1999 (''Amendment No. 2''). Amendment No. 2 provides information as to what the Exchange will do to make adjustments in value for differential index options contracts when certain corporate events take place in the case of Equity Differential and Paired Stock Differential options, or when significant action has been taken by the publisher of an index in the case of Index Differential options. Amendment No. 2 also specifies that if the Exchange chooses as either a designated or benchmark index an index that has been approved for index warrant trading only, to establish the appropriate position limit the Exchange will (i) use the procedures set forth in its narrow-based index options rules with respect to differential options using a narrow-based index warrant and (ii) consult with the Commission with respect to differential options using a broad-based index warrant. Furthermore, Amendment No. 2 indicates the Exchange's intent to trade flexible exchange-traded options on Differential index options and provides the proposed rule language governing these options.

[5] The proposal is similar to filings of the American Stock Exchange and the Chicago Board Options Exchange, Inc. *See* Exchange Act Release No. 40537 (October 8, 1998), 63 FR 56052 (October 20, 1998); SR–CBOE–98–50.

of the designated index or stock during the period is greater than the percent gain in the underlying benchmark index or stock, then a Differential Call Option originally struck at the money will have a positive value at expiration and a Differential Put Option originally struck at the money will expire worthless. If the percentage gain in the level of the designated index or stock during the period is less than the percent gain in the underlying benchmark, then a Differential Put Option originally struck at the money will have a positive value at expiration and a Differential Call Option originally struck at the money will expire worthless. Thus, a Differential Index Option affords an investor the opportunity, through a single investment, to participate in the relative out-performance of a designated index or stock versus a benchmark index or stock (a Differential Call Option) or the relative under-performance of a designated index or stock versus a benchmark index or stock (a Differential Put Option) over the life of the option, regardless of the absolute performance of the designated index or stock.

For example, an investor may feel that Microsoft will out-perform the technology sector for the next few months, but is unsure whether the overall technology sector will move higher or lower. If the investor were to buy an at-the-money standardized Microsoft call option, and the stock declined, the option would expire worthless, even if the stock declined by a much smaller percentage than the technology sector. On the other hand, if the investor were to purchase an at-the-money Equity Differential Call Option on the relative performance of Microsoft versus the PSE Technology 100 Index (''Tech 100''), a benchmark measure of the technology sector, and Microsoft declined by a smaller percentage than the Tech 100, the Equity Differential Call Option would have a positive value at expiration. Conversely, an investor who believes that Microsoft will under-perform the Tech 100 may purchase at-the-money Equity Differential Put Options. If Microsoft under-performs the Tech 100, the Differential Put Options will have a positive value at expiration, regardless of whether Microsoft itself has increased or decreased on an absolute basis. This example can be applied to the other types of Differential Options; the different in the relative performance of a designated stock versus a benchmark stock, such as Microsoft versus Compaq (''Paired Differential Stock Option''), or the relative performance between two indexes, such as the PSE Technology 100 and the Wilshire Small Cap Index (''Differential Index Option'').

a. Differential Calculation. The underlying security for a Differential Index Option is an index (called the ''differential index'') of the performance of the designated stock or index relative to the benchmark stock or index. The differential index is calculated as follows: on December 31 of each year, prior to the listing of a Differential Index Option series, base reference prices are established for the designated index or stock and the benchmark index or stock (typically, the closing levels on a designated business day). Thereafter, percent changes from the base values of both the designated index or stock and the benchmark index or stock are continuously calculated and the percent change in the benchmark is subtracted from the percent change in the designated index or stock, providing a positive number if the designated index or stock has either out-gained or suffered a lesser percentage decline than the benchmark, and a negative number if the benchmark has out-gained the designated index or stock or suffered a lesser percent loss.

The percentage differential in the relative gain or loss is then multiplied by 100 and added to a fixed base index value (typically 100) to yield the differential index that will underlie the Differential Index Options:

$$Dt=((I_t/I_0)-(B_t/B_0))\times 100+f$$

Where:

D=differential index;
I=designated index or security;
B=benchmark index or security;
t=current or settlement value of index or security;
0=base reference value of index or security;
f=a fixed base index value, typically 100.

Thus, if the designated index or security has out-performed the benchmark by 7%, and the fixed value, f, is set at 100, the differential index value would be 107; if it has under-performed by 7%, the differential index value would be 93. The base reference values will remain in effect for a predetermined, fixed period (expected to be between six months and two years). Similar to other index values published by the Exchange, the value of each differential index will be calculated continuously and disseminated under a separate symbol every 15 seconds over the Consolidated Tape Association's Network B.

b. Designated Indexes, Designated stocks, Benchmark Indexes and Benchmark Stocks. Only stocks that meet the current Exchange Rules for listing standardized equity options will be eligible designated stocks in Equity Differential Options. Only stocks that meet the current Exchange Rules for listing standardized equity options will be eligible designated stocks or benchmark stocks in Paired Stock Differential Options. In this way, only the most liquid, actively traded stocks will be considered.

Similarly, only indexes that meet the current Exchange Rules for listing standardized index options and have been approved for options or warrant trading by the Commission will be eligible for designation either as designated indexes or benchmark indexes in Equity and Index Differential Options. In this way, only those indexes already deemed by the Commission to be suitable for options trading will be considered.

c. Expiration and Settlement. The proposed Differential Index Options will be European style (*i.e.*, exercises permitted at expiration only) and cash settled. Index Differential Options in which both the designated or benchmark indexes are broad-based will trade between the hours of 7:00 a.m. and 1:15 p.m., Pacific Time. All other Differential Index Options will trade between 7:00 a.m. and 1:02 p.m., Pacific Time. Differential Index Options will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

While the Exchange seeks approval to list series of Differential Index Options as set forth in proposed PCX Rules 7.20 through 7.31 and Rule 8.102, the Exchange anticipates that it will initially list only five series with expirations corresponding to the four calendar months in the March cycle in the current calendar year, and a fifth series expiring in March of the following calendar year.

The exercise settlement value for Differential Index Options will be calculated based on the respective exercise settlement values for standardized options on each of the designated and benchmark indexes expiring on the same day. The exercise settlement value for Equity Differential Options will be calculated based on the primary exchange regular-way opening sale price of the designated stock, or, if the stock is traded through the Nasdaq system, the first reported regular-way

sale that occurs after the best bid and best offer for that security are unlocked and uncrossed and is greater than or equal to the best bid and less than or equal to the best offer at the time of the reported sale and the exercise settlement value for standardized options on the benchmark index expiring on the same day. The exercise settlement value for Paired Stock Differential Options will be calculated based on the primary exchange regular-way opening sale prices of the designated and benchmark stocks, or, if the stock is traded through the Nasdaq system, the first reported regular-way sale that occurs after the best bid and best offer for that security are unlocked and uncrossed and is greater than or equal to the best bid and less than or equal to the best offer at the time of the reported sale.

d. Applicable Exchange Rules. Proposed PCX Rules 7.20 through 7.31 and Rule 8.102 will apply to Differential Index Options contracts. These Rules cover issues such as surveillance, exercise price and position limits. Differential Index Options will also be subject to (1) the PCX's surveillance procedures currently used to monitor trading in each of the Exchange's index and equity options, and (2) sales practice and suitability rules applicable to standardized options. The Exchange currently intends to create Differential Index Options using the indexes and options currently traded on the PCX.

Differential Index Options are ''securities'' under section 3(a)(10) of the Act, and therefore are exempt pursuant to section 28(a) of the Act from any state law that prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ''bucket shops'' or other similar or related activities. Differential Index Options will be traded pursuant to the Exchange's rules and rule amendments discussed herein, subject to prior approval by the Commission.

e. Position Limits. The Exchange proposes that the position limits for Differential Index Options be set at the lower of the separate position limits for standardized index options trading on the designated index or the benchmark index. In the event that one or both of the indexes is not currently the subject of standardized index options trading, but rather has been approved for index warrant trading only, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the indexes if such options were trading.[6] For Equity Differential Options, the Exchange proposes that the limits be set at the position limit of standardized options trading on the designated stock. In the event that standardized options currently do not trade on the designated stock, the Exchange will establish a position limit at the level that would be in effect if standardized options did trade on such stock. For Paired Stock Differential Options, the Exchange proposes that the position limits be set at the lower of the separate position limits of standardized equity options trading on the designated or benchmark stocks. In the event that one or both of the stocks is not currently the subject of standardized options trading, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the stocks if such options were trading.

The Exchange also proposes, for position and exercise limit purposes, to require that positions in Differentials with the same designated or benchmark stock or narrow-based index be aggregated. For example, if a Paired Stock Differential Option has been created using Microsoft Corporation stock as the benchmark and Compaq, Inc. as the designated stock, positions in that Differential Option will be aggregated for position and exercise limit compliance purposes with positions in other Paired Stock Differentials that use one of these two stocks. Furthermore, Equity Differential Options using narrow-based indexes versus either Microsoft or Compaq as the benchmark or designated stock also will be aggregated for position and exercise limit compliance purposes with positions in Paired Stock Differential Options using one of those two stocks. However, with respect to the use of broad-based indexes as either the benchmark or designated index in an Equity or Index Differential, no aggregation of positions will be required. For example, if Equity Differentials are created using the PSE Tech 100 Index as the benchmark index and Apple Computer, Inc., Philip Morris Companies, Inc. and Telecommunications, Inc. as designated stocks, members will not be required to aggregate positions in those differentials to determine whether an account is in compliance with position and exercise limit rules.

The Exchange further proposes that Differential Index Options not be aggregated with other standardized options on the underlying designated stock or index nor on the underlying benchmark stock or index for purposes of determining whether an account is in compliance with position and exercise limit rules. The Exchange believes this policy is appropriate for the following reasons. First and foremost, the value of Differential Index Options will be calculated in a different manner from the value of other currently trading standardized equity and index options. In fact, because of the subtraction of the benchmark from the designated stock or index, the value of a Differential Index Option may appreciate (depreciate) even as the value of the corresponding standardized option on the designated stock or index decreases (increases). Further, the value of a Differential Index Option is in part a function of the correlation between the designated stock or index and the benchmark (*i.e.*, the tendency of the designated stock or index and the benchmark to move concurrently). This correlation component of the Differential Index Option price is not considered in determining the value of other standardized options on either the designated or benchmark stock or index. As a result, the Differential index Option is likely to be more or less sensitive to movements in the designated stock or index than the other standardized options on that stock or index, and changes in Differential Index Option may be in the opposite direction from changes in other standardized options prices. Therefore, any attempt to aggregate Differential Index Options with other standardized options for determination of position limits would be combining contracts that, by nature, can change in value quite differently.

Differential Index Options also have certain terms not found in many other standard equity and index options. Differential Index Options are cash settled, based on opening prices of the designated stock or index and the benchmark and feature European exercise. Each Differential Index Option contract changes in value as a function of the differential performance of a $10,000 long position in the designated stock or index and a $10,000 short position in the benchmark. May standardized equity options are settled by physical delivery of 100 shares of the underlying stock, worth $5,000 per contract for a $50 stock, and feature American exercise. Standardized index options typically feature European exercise, cash settlement and represent

[6] In the event that one or both of the indexes is the subject of index warrant trading only, the position limit for a differential option using a narrow-based index warrant will be established using PCX's narrow-based index options rules. *See* PCX Rule 7.3. The Exchange will consult with the Commission to establish a position limit for a differential option using a broad-based index warrant. *See* Amendment No. 2, *supra* note 4.

approximately $25,000 worth of a basket of stocks (with the index at the 250 level). Any meaningful aggregation of positions in contracts with different terms would be difficult to establish as a simple rule, and would require a case-by-case analysis of the terms for each Differential Index Option contract compared to other standardized contracts on the designated and/or benchmark stock or index.

The Exchange also believes that the aggregation of position limits hinders the probability of success of any new product. The aggregation of positions in Differential Options with positions in standardized options will result in the new product competing with the established product for a limited amount of potential volume. Thus, in the Exchange's view, with aggregated position limits, new products cannot ''grow the pie'' and increase overall liquidity in all the products; they start at a disadvantage which may be impossible to overcome.

f. Customer Margin. Since Differential Index Options are similar to other index options, the Exchange proposes to apply standard index options margin treatment to Differential Index Options.[7] Differential Index Options on the relative performance of one broad-based index versus another will be margined as broad-based index options and short positions therein will require margin equal to the current market value of the option plus an amount equal to 15% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market value of the option plus 10% of the Differential Index. All other Index Differential Options, Equity Differential Options, and Paired Stock Differential Options will be margined as narrow-based index options and short positions therein will require an amount equal to the current market value of the Differential Index Option plus an amount equal to 20% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market price of the options plus 10% of the Index. The Exchange believes that this method of determining customer margin is appropriate because the range of volatities expected for Differential Indexes should not be significantly different than the expected rage for other indexes and equities. The volatility of a Differential Index is based upon the volatilities of the designated and benchmark indexes or stock and the correlation of these components.[8]

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

II. 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, NW, Washington, DC 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 the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–62 and should be submitted by June 1, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11600 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* PCX Rule 2.16(c) for margin requirements for standard index options.

[8] *See* Amendment No. 1, *supra*, note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41350; File No. SR–PCX–99–02]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Matters Subject to Arbitration

I. Introduction

On February 3, 1999, the Pacific Stock Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend PCX Rule 12.1 to allow for claims related to employment, including sexual harassment, or any discrimination claim in violation of a statute, to be eligible for submission to arbitration only where all parties have agreed to arbitration after the claim has arisen. Notice of the proposed rule change, together with the substance of the proposal, was provided in a Commission release and in the **Federal Register**.[3] The Commission received no comment letters. This Order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 41206 (March 23, 1999) 64 FR 15388 (March 31, 1999).

II. Description of the Proposal

The proposed rule change will modify the current requirement in PCX Rule 12.1 that any employment-related disputes between a registered representative and a member or member organization be addressed by arbitration. The proposal provides that claims related to employment, including sexual harassment, or any discrimination claim in violation of a statute, are eligible for arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise.

The proposed rule change is the most recent in a series of rule changes implemented by self regulatory organizations (''SROs'') which modify or clarify exchange rules with regard to arbitration of employment related claims, including claims of sexual harassment.[4] The proposed rule change is substantially similar to the rule changes the Commission approved for the other SROs; however, PCX has broadened the scope of the previously approved rule changes, to mandate that all claims related to employment, including sexual harassment, or any discrimination claim in violation of a statute, are eligible for arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise.

III. Discussion

Under the Act, SROs are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to section 19(b)(2) of the Act,[5] the Commission is required to approve an SRO's proposed rule change if the Commission determines that the proposal is consistent with applicable statutory standards. These standards include section 6(b)(5) of the Act,[6] which provides that the Exchange's rules must be designed to, among other things, ''promote just and equitable principles of trade,'' and ''protect investors and the public interest.'' Section 6(b)(5) also provides that the Exchange's rules may not be designed to ''regulate * * * matters not related to the purposes of the [Exchange Act] or the administration of the [Exchange].''

The Exchange's proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) of the Act in particular, in that it is designed to promote just and equitable principles of trade and the protection of investors and the public interest by improving the administration of an impartial arbitration forum for the resolution of disputes between members and persons associated with members. Furthermore, the proposed rule change is intended to provide uniformity throughout the securities industry as other SROs have modified or clarified their rules with regard to the arbitration of employment related claims. It is reasonable for the Exchange to make a policy determination that in this unique area it will not, as an SRO, permit the use of arbitration unless there is a post-dispute agreement. It is also not improper under the Act for one SRO's policy determination to differ from that of another.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposal, SR–PCX–99–02, be and hereby is approved.[8]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11599 Filed 5–07–99; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Exchange Act Release No. 40109 (June 22, 1998) 63 FR 35299 (June 29, 1998) (National Association of Securities Dealers (''NASD'') no longer requires associated persons, solely by virtue of their association or registration with the NASD, to arbitrate claims of statutory employment discrimination); Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999) (New York Stock Exchange removes mandatory arbitration of statutory employment discrimination claims from its rules, allowing arbitration only pursuant to a post-dispute agreement to arbitrate); Exchange Act Release No. 40861 (December 29, 1998) 64 FR 1039 (January 7, 1999) (Boston Stock Exchange excludes from mandatory arbitration any employee dispute between a registered representative or associated persons and a member organization alleging employment discrimination in violation of a statute, including sexual harassment, unless the parties agree to arbitrate the claim after it has arisen); Exchange Act Release No. 41080 (February 22, 1999) 64 FR 10033 (March 1, 1999) (Chicago Board Options Exchange adopts new Interpretation .03 under Exchange Rule 18.1 to clarify that a claim involving employment discrimination, including sexual harassment, is not appropriate for mandatory arbitration at the Exchange).

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council; Public Hearing

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:00 p.m. May 20, 1999 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Yolanda Lassiter, U. S. Small Business Administration, 310 West Wisconsin Avenue Milwaukee, Wisconsin 53203; (O) 414 297–1092; (F) 414 297–3928.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–11648 Filed 5–7–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3050]

Proposed Information Collection

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection; Foreign Service written examination registration form.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular submission (we are also submitting an emergency approval request).

Originating Office: PER/REE.

Title of Information Collection: Foreign Service Written Examination Registration Form.

Frequency: Annually.

Form Number: NA.

Respondents: Individuals who wish to register for the Foreign Service Written Examination.

Estimated Number of Respondents: 10,000.

Average Hours Per Response: 1/6.

Total Estimated Burden: 1,666 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to REE, 1800 North Kent Street (703) 875–7252, U.S. Department of State, Arlington, VA 22209.

Dated: April 27, 1999.

Ruben Torres,

Executive Director.

[FR Doc. 99–11725 Filed 5–7–99; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 3051]

Information Collection Under Emergency Review

AGENCY: Department of State.

ACTION: Notice of information collection under emergency review: Foreign Service written examination registration form.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: PER/REE.

Title of Information Collection: Foreign Service Written Examination Registration Form.

Frequency: Annually.

Form Number: NA.

Respondents: Individuals who wish to register for the Foreign Service Written Exam.

Estimated Number of Respondents: 10,000.

Average Hours Per Response: 1/6.

Total Estimated Burden: 1,666 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by June 1, 1999. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 4/13/1999. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to PER/REE, 1800 N. Kent St., (703) 875–7252, U.S. Department of State, Arlington, VA 22209.

Dated: April 27, 1999.

Ruben Torres,

Executive Director.

[FR Doc. 99–11726 Filed 5–7–99; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST–1999–5631]

Notice Concerning the Interagency Task Force on the Roles and Missions of the U.S. Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The President has directed, through Executive Order 13115, an independent study on the Roles and Missions of the U.S. Coast Guard. The Interagency Task Force shall report to the President through the Secretary of Transportation, providing advice and recommendations on the appropriate roles and missions for the U.S. Coast Guard through year 2020. The Task Force will seek ultimately to identify and distinguish which Coast Guard roles, missions, and functions: (a) might be added or enhanced; (b) might be maintained at current levels of performance; or (c) might be reduced or eliminated. The Task Force will also consider whether current Coast Guard roles, missions, and functions might be better performed by private organizations, public authorities, local or State governments, or other federal agencies. The Task Force will also consider the impact on Coast Guard roles, missions, and functions of future prospects in the areas of technology, demographics, the law of the sea, national security, etc. The Task Force is seeking comments from the public and industry on the issues listed above concerning the appropriate roles and missions of the Coast Guard.

ADDRESSES: Your written comments must be signed and refer to docket number OST–1999–5631. Send them to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001. To be considered for the report, comments should be received by 1 June 1999. All comments received will be available for public examination at this address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. Persons who wish notification of the receipt of their comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: CAPT John Crowley, Jr., Interagency Task Force on the Roles and Missions of the U.S. Coast Guard, 1111 Jefferson Davis Highway, Suite 502 West Tower, Arlington, VA 22302, telephone (703) 416–0192, facsimile (703) 416–6793.

Issued in Washington, DC this 3rd day of May, 1999.

Mortimer L. Downey,

Deputy Secretary of Transportation.

[FR Doc. 99–11681 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4370]

Transportation Equity Act for the 21st Century (TEA–21); Implementation for the Transportation and Community and System Preservation Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for applications for Fiscal Year (FY) 2000 Transportation and Community and System

Preservation (TCSP) grants; request for FY 2000 TCSP research proposals; request for comments on program implementation and research needs.

SUMMARY: This document provides guidance on section 1221 of the Transportation Equity Act for the 21st Century (TEA–21), which established the Transportation and Community and System Preservation Pilot Program. The TCSP provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. The States, local governments, metropolitan planning organizations (MPOs), and other local and regional public agencies are eligible for discretionary grants to plan and implement transportation strategies which improve the efficiency of the transportation system, reduce environmental impacts of transportation, reduce the need for costly future public infrastructure investments, ensure efficient access to jobs, services and centers of trade, and examine development patterns and identify strategies to encourage private sector development patterns which achieve these goals. FY 2000 is the second year of the TCSP pilot program.

Through the TCSP, the States, local governments, MPOs, and other public agencies will develop, implement and evaluate current preservation practices and activities that support these practices, as well as develop new, innovative approaches to meet the purposes of the TCSP grant program (see section II in preamble). Funding for the TCSP was authorized at $25 million per year for FY's 2000 through 2003 by TEA–21. The Administration's FY 2000 budget proposes to increase the funding for TCSP to $50 million as part of the President's Livability Initiative. The FHWA seeks requests for FY 2000 TCSP grants, proposals for FY 2000 TCSP research, and public comments from all interested parties regarding implementation of the TCSP program and research related to the program in FY 2001 and beyond.

DATES: Requests for FY 2000 grants should be received in the appropriate FHWA Division office by July 15, 1999. Proposals for FY 2000 TCSP research should be received in the FHWA Office of Planning and Environment by September 15, 1999. Comments on program implementation, research needs, and priorities should be received by the DOT Docket Clerk on or before July 15, 1999.

ADDRESSES: Grant requests should be submitted to the FHWA Division Office in the State of the applicant. Division addresses and telephone numbers are provided in an attachment to this notice. Research proposals should be submitted to the Office of Human Environment, Planning and Environment, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590.

Your signed, written comments on program implementation should refer to FHWA Docket No. 98–4370 appearing at the top of this notice and you should submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Susan B. Petty, Office of Human Environment, Planning and Environment, (HEHE), (202) 366–0106; or S. Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371; Federal Highway Administration, 400 Seventh Street SW, Washington DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register's** home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. Information is also available on the FHWA Web page: (*http://www.fhwa.dot.gov/programs.html*).

Background

Section 1221 of the TEA–21 (Pub. L. 105–178, 112 Stat. 107 (1998)) established the TCSP. The Department of Transportation's Strategic Plan (1997–2003) includes a series of goals related to safety, mobility and access, economic growth and trade, enhancement of communities and the natural environment, and national security. The TCSP pilot program furthers each of these goals and provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. By funding innovative activities at the neighborhood, local, metropolitan, regional, and State levels, the program is intended to increase the knowledge of the costs and benefits of different approaches to integrating transportation investments, community preservation, land development patterns and environmental protection. It will enable communities to investigate and address important relationships among these many factors.

This notice includes three sections: Section I—Program Background and Information of Implementation of TCSP in FY 1999; Section II—Requests for FY 2000 TCSP Grants; and Section III—Requests for FY 2000 TCSP Research Proposals.

Section I: Program Background and Implementation of TCSP in FY 1999

Introduction

The TCSP provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. States, local governments and MPOs are eligible for discretionary grants to plan and implement strategies which improve the efficiency of the transportation system, reduce environmental impacts of transportation, reduce the need for costly future public infrastructure investments, ensure efficient access to jobs, services and centers of trade, and examine development patterns and identify strategies to encourage private sector development patterns which achieve these goals. Through the TCSP, States, local governments, and MPOs implement and evaluate current preservation practices and activities that support these practices, as well as develop new and innovative approaches. FY 2000 is the second year of the TCSP program.

The TCSP supports high priority goals of the administration for transportation systems to foster sustainable communities and minimize greenhouse gas emissions that contribute to global climate change. Transportation systems interact with built, social and natural systems to produce short and long term environmental, social equity and economic results. The TCSP strengthens these inter-relationships between transportation plans, strategies and investments and community development and preservation to help create sustainable communities. Within

the context of sustainable communities, reduction of greenhouse gas emissions in the transportation sector is one focus for the TCSP.

FY 1999 TCSP Program Implementation Process

The DOT established this program in cooperation with other Federal agencies, State, regional, and local governments. The FHWA is administering this program and has established a working group with representatives from the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), the Research and Special Programs Administration/Volpe Center (RSPA), the Office of the Secretary of Transportation (OST), and the Environmental Protection Agency (EPA). The working group prepared the initial design and implementation of this program. In the first year of the program, the working group gathered input through a **Federal Register** notice (under FHWA Docket No. 98–4370) (September 16, 1998, 63 FR 49632) and through meetings with stakeholders conducted as part of DOT's outreach activities following the passage of the TEA–21.

In FY 1999, the FHWA received more than 520 Letters of Intent requesting TCSP funding. These requests totaled almost $400 million and were received from agencies in 49 States and the District of Columbia. To review and evaluate the Letters of Intent, the FHWA established a review process which included review and comments from the field staff of the FHWA, the FTA, and the EPA as well as a 20-person review panel comprised of technical program experts representing the agencies participating in the working group described above. The review panel recommended to the FHWA Administrator the applicants that were asked to develop full proposals for further consideration. A similar panel reviewed the full proposals. Information on the review process is included below.

On April 26, 1999, the FHWA announced the award of 35 TCSP grants for FY 1999. Grants were awarded to 28 States and the District of Columbia. A list of the grants awarded in FY 1999 and a brief description of each proposal are included under Attachment I to this notice.

Summary of Comments to the Docket

The September 16, 1998, **Federal Register** notice (63 FR 49632) requested comments on TCSP program implementation in FY 2000 and beyond. Letters from the following organizations were submitted to the docket (FHWA–1998–4370):

American Public Transit Association (APTA)
Metro (Portland, Oregon)
Metropolitan Transportation Commission (San Francisco, California)
Missouri Department of Natural Resources
Montana Department of Transportation
NAHB Research Center
National Association of Home Builders
New York State Thruway Authority
The Trust for Public Land
Washington State Department of Transportation
Wisconsin Department of Transportation

Most of these letters included several comments. Some comments responded directly to questions posed in the September 16, 1998, **Federal Register** notice, while some comments expressed other perspectives and concerns. Comments that respond to a question posed in the **Federal Register** notice have been presented in items numbered one through six in this section. Other comments have been grouped to provide a logical presentation and avoid repetition and are included under items numbered 7 though 10 in this section. Many of the comments received were extensive, and have been paraphrased. The complete docket may be viewed at the locations provided under the captions **ADDRESSES** and Electronic Access in this preamble.

1. Project Selection Criteria

The FHWA asked whether there should be any additional weight or priority applied to any of the criteria for FY 2000 and beyond; and whether additional criteria for proposal evaluation should be added.

Comments: Several commenters offered suggestions for factors that should be considered when evaluating TCSP proposals, including: Evidence that the applicant can effectively complete the project in a timely manner; whether the results could be replicated both locally and nationally (i.e., avoid projects that are unique to local circumstances); projects that have a high likelihood of success; and planning proposals that would lead to implementation activities. A commenter also suggested that TCSP proposals should be selected based on how well they help answer key research questions and data uncertainties. This commenter also proposed that the overall project selection could be balanced using an ''Experimental Design'' that provides a mix of different types of projects that focus on each of the key research issues.

One commenter proposed that TCSP applications should be given priority based on their ability to demonstrate: Adopted regional and local policies that show a commitment to linking transportation investments with land use development; a commitment to State growth management requirements (such as having urban growth boundaries); and substantial financial commitment to local transportation investments that support alternative modes of travel and environmentally sensitive land use development. Another commenter suggested that program eligibility should require that proposals clearly address the link between land use and transportation in the preservation of the viability and effectiveness of the transportation system and the community it serves. This commenter argued that the TCSP program criteria and guidance, as currently written, would allow activities with no relation to this land use/transportation link. While supporting these points, another commenter added that the role transit can play in land use considerations should also be emphasized in program guidance.

A commenter proposed that implementation grants in regions pursuing a consistent set of mutually supportive policies should be given higher priority and areas pursuing conflicting policies should receive lower priority. The following example was given for a high priority implementation grant: projects reinforcing established urban growth boundaries, which would prevent ''leapfrog'' development and the need to build additional highway capacity. An example of a lower priority project would be in an area that proposes a transit-based development project while simultaneously building new highway capacity in the same corridor without a planning study demonstrating that these actions are consistent.

Similar perspectives were offered by commenters who said that implementation grants should be awarded in areas demonstrating an understanding of the ''land use/transportation link'' and are currently applying that understanding towards transportation system and community preservation. These commenters proposed that priority be given to areas that have demonstrated a strong commitment to these principles through planning, public outreach, adoption of supportive land use regulations, and commitment of Federal, State, and local funding to these activities.

Response: We concur with the comments made regarding factors that should be considered. With the intense

competition during the first round of the Letters of Intent (LOIs) review, the workgroup focused on proposals that could begin immediately upon selection, where the sponsor appeared to have the resources to produce a successful project, and those LOIs that would produce results, tools, and lessons that would be transferrable to other areas.

Language clarifying the distinction between planning grants and implementation grants has been added to this notice. The FHWA will continue to rely on input from the FHWA, the FTA, and the EPA field offices to address concerns about the ''lower priority'' project described by the commenter in this item number 1. This type of concern also underscores the importance of funding only those activities that are consistent with the Statewide or metropolitan planning processes (see item number 2, ''Planning'').

The FHWA has added information in this notice about the types of projects that were selected, grant and research themes for consideration, and abstracts of the selected grants. It is the intent of this pilot program to fund activities which address the interaction of transportation and community and system preservation. The FHWA believes that effectively linking land use and transportation planning is a principle strategy to be investigated under TCSP. However, the FHWA is also interested in pursuing other strategies that should also be developed and evaluated under TCSP.

2. Planning

The FHWA asked how it can ensure that TCSP-funded activities support the existing statewide and metropolitan planning process. How can the FHWA support innovative activities, integrate new planning techniques and refocus the planning process to ensure TCSP-related activities are addressed? What is the best way for local governments and non-traditional partners to coordinate with the State and metropolitan planning process?

Comments: In general, there was strong support that TCSP proposals should be consistent with and supported by statewide and metropolitan planning processes. However, several commenters expressed concern that the TCSP pilot could circumvent the existing statewide and metropolitan planning processes, and proposed that the FHWA should require all LOIs to include written confirmation or a letter of support from the applicable State or MPO that the proposed project is consistent with the statewide or metropolitan planning process. One commenter contrasted the TCSP pilot to other discretionary programs (e.g., Access to Jobs) that explicitly require coordination with the metropolitan planning process.

Regarding the involvement of non-traditional partners, one commenter suggested that letters of support from these partners should be required as part of the LOI. A similar comment was made that a demonstration should be made that all appropriate parties are involved, including affected governments and transportation agencies, as well as neighborhood, business, environmental, and social interest groups.

One commenter said that it is appropriate in the first year of the pilot program to award grants for projects which have not been included in the metropolitan or statewide transportation improvement program (23 CFR part 450), and went on to say that beyond the first year, projects should be part of the metropolitan transportation planning process before an LOI is submitted. This commenter suggested that to meet the Transportation Improvement Plan(TIP)/ State TIP fiscal constraint requirement, the TIP/STIP could note that the project is conditioned upon DOT's approval of the project, but establish the area's commitment to the project. Otherwise, this commenter added, including the project in the TIP/STIP becomes a *pro forma* activity with the decision to support the project coming from the Federal rather than the local level.

Two commenters supported using TCSP grants for a stand-alone phase of a multi-phased project that has already been partially funded.

Response: Section II of this preamble, ''Relationship of the TCSP to the Transportation Planning Process,'' describes the FHWA's commitment to the transportation planning process that was established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914 (1991)). Generally, the LOIs demonstrated coordination with the appropriate State DOTs, MPOs, and transit providers in the text of the LOI and some submitted letters of support. Also, input from the FHWA, the FTA, and the EPA's field offices was specifically sought on this topic because these offices are familiar with metropolitan and statewide planning processes and practices. This notice did not require States or MPOs to act as ''clearinghouses'' for LOIs, but rather encouraged coordination and partnerships. The **Federal Register** notice for FY 2000 continues to emphasize that the TCSP pilot should support statewide and metropolitan planning processes. In addition, the notice encourages TCSP applicants to notify the appropriate State DOT and MPO of their application to further promote this coordination. Future reviews of full grant applications will continue to look for evidence of this support.

As one commenter suggested, TCSP projects could be included in a TIP/ STIP for informational purposes. If the applicant is successful in receiving funds through the competitive process, the project could then be formally incorporated into the TIP/STIP. In general, projects should not be included in the TIP/STIP as a pro forma activity, but should reflect consistency with the appropriate regional or statewide long-range transportation plan, which has been developed in accordance with the requirements in the planning rule (23 CFR part 450). A single phase of a multi-phased project would be eligible for TCSP funds if the project meets the appropriate criteria. However, as noted in the FY 1999 **Federal Register** notice, TCSP funds are intended to fund new and innovative activities, and not to be applied towards routine or ongoing activities that would otherwise be undertaken by the State or MPO.

3. Grants

The FHWA asked how it can ensure improvements to a single location, neighborhood street, or job center provide meaningful community preservation impacts on the larger region. How should the FHWA balance grant-making between planning and implementation grants? Should there be a cap on the size of grants? Should land acquisition and right-of-way purchases be funded?

Comments: One commenter proposed that initially there should be no fixed percentage between grants to localities that are new to community preservation practices (referred to as planning grants in the FY 99 program) and those localities that have already implemented some of these practices (referred to as implementation grants in the FY 1999 program) and research, but early in the TCSP program, higher priority should be placed on research and evaluation in the first three years and equal weight on start-up and on-going grantees. In comparison, two commenters advocated that there be no cap on grants or a specific split between planning and implementation activities, but recognized that given the available funds, a large grant request may not be feasible. Another commenter supported a mix of grants, but recommended that most of the TCSP funds should be used

for grantees that are already involved in community preservation activities since the greatest benefits of the TCSP program will come from the demonstration of actual practices.

Another commenter said that proposals for grantees already involved in community preservation practices should demonstrate that prior public information and involvement has occurred with all potentially affected parties and that the project has already been approved by the appropriate MPO. In addition to public involvement, proposals for larger grants should also be able to demonstrate by analysis of data and forecasts the expected impact of the project on the region and perform a benefit and cost analysis that quantifies all expected impacts.

Four commenters stated that land acquisition and right-of-way purchases should be eligible for funding. One commenter clarified that with the high cost of these types of activities the DOT should make certain that they meet all of the TCSP criteria.

Response: Rather than setting specific limits on the types of grantees, the FHWA will continue to seek a range of proposals, which would take into consideration the category of grantee, type of project, geographic location, population served, and urban/suburban/rural mix. One immediate goal of the pilot is to fund activities that will provide demonstrable results, be instructive to future applicants and contribute to the body of knowledge regarding the relationship between transportation and community and system preservation. The FHWA will also consider the percentage of grantees that are new to community preservation and those that have already begun some of these practices. The FHWA will use the results of evaluations of individual projects and research to set priorities for the program in the future. Because it is too early in the program for these results, in FY 2000, the FHWA is not setting specific priorities but offers suggestions of new areas to consider (see ''Strategic Priorities'' in Section II of this preamble).

While research is an important component of the TCSP program, the FHWA disagrees with the comment that a majority of TCSP funds should be used for research, rather than for grant activities. All over the country, States, MPOs, local governments, and their partners are engaged in, or are planning to begin activities consistent with the TCSP objectives. The FHWA intends to use the available TCSP funds for grantees to test, evaluate, and share these activities. In addition, because TCSP requires evaluation and measurable results from grants, the individual projects will further the knowledge base on community preservation practices. As discussed under item number 5 in this section evaluation is an important component of each successful grant. Since the FHWA is interested in increasing the knowledge base, producing tools, and lessons which can be replicated across the country, projects which would produce quantitative data and forecasts (including benefit and cost analyses) would be reviewed favorably.

Public involvement is a high priority in the TCSP pilot and is a fundamental component of the metropolitan and statewide planning process. To the extent that TCSP proposals implement or are linked to the transportation planning process, these proposals should receive adequate public involvement (including the involvement of non-traditional partners). The involvement and participation of non-traditional partners was a priority for all grants that were submitted in FY 1999.

Right-of-way and land acquisition are currently eligible activities within the context of a project or program that meets the TCSP criteria. As stand-alone activities, they would still need to meet the appropriate criteria.

4. Project Timeliness

The FHWA asked how important the time line should be for implementation of projects in evaluation of proposals.

Comments: Some commenters thought timeliness was a very important consideration in grant selections, while others thought it should not be a primary concern. One commenter replied that timeliness of grants to States, local governments, and MPOs that have already initiated community preservation programs and policies is less important than for other applicants because public involvement and benefits and costs may have already been estimated in a prior planning study. The commenter also stated that timing is less important for grantees that are just beginning preservation practices since a primary purpose of TCSP planning grants is to provide the opportunity for ''learning by doing'' through integration of transportation, land use, community development, and environmental planning. In comparison, another commenter stated that timing is important for grants to recipients that have not yet initiated community preservation programs and policies. A third commenter stated that timely implementation is very important and should be used as a mandatory criterion for the program, adding that grant awards should only be made if results are available to impact the next transportation authorization bill in 2003. Another commenter agreed that timely implementation should be used as a mandatory criterion for the program, and that awards should only be made if the grantee can show it is ready to implement the project in the year the grant is made.

Response: The FHWA agrees with the commenters that timeliness of the projects is important and should be a consideration in grant selection. The FHWA will look at the applicant's ability to carry out the TCSP proposal in a timely fashion and produce results that could be shared nationally.

5. Evaluation of Projects

The FHWA asked how project sponsors can effectively evaluate the results of activities. How can the results of individual project evaluations be used to evaluate the overall impacts of TCSP?

Comments: One commenter responded that collecting the appropriate data and analyzing complex relationships for evaluation purposes can be expensive, and that the level of resources devoted to evaluation will vary depending on the type of project. At a minimum, the desired results of the project should be defined in terms of travel behavior, land use, and community design and amenities. A means of measuring whether these results have been achieved should be included in the evaluation plan. A recommendation was made that a certain percentage of projects be evaluated by an independent party, preferably by an academic institution, adding that since the funding for research and evaluation is limited, it may be useful to focus these activities at a few centers, with each center specializing on one specific type of project or research issue. Two other commenters proposed that the FHWA contract with independent groups or non-profit associations to assess the results of the program, and to inform the reauthorization process in 2003.

Another commenter was concerned about the TCSP's emphasis on performance measures because this is an area of much debate and practical examples are difficult to identify and implement. This commenter stated that the major focus of the TCSP program should be on achieving the primary objectives for which the program was created and not directing a disproportionate share of limited TCSP funds to measuring outcomes, adding that project evaluation will be determined in part by the objectives of a particular project which may be

difficult to measure with quantitative measures or analytical procedures. Ultimately, this commenter argued, the first few years of the program will reveal how projects can be deemed successful or not.

Response: The FHWA agrees with the commenters above which stated that evaluation was very important to TCSP. The FHWA is working with the DOT's Volpe National Transportation Systems Center and an independent consulting firm to evaluate the TCSP program, during the time frame of TEA–21. Furthermore, detailed guidance on evaluating individual grants has been provided to FY 1999 TCSP grantees and is electronically available on the website *www.fhwa.dot.gov*. The FHWA does not anticipate that an appropriate project evaluation would use a significant portion of project funding.

Since the TCSP program is a discretionary pilot that seeks to encourage innovation and new strategies that go beyond traditional transportation programs, it is incumbent on the FHWA to ensure that appropriate evaluations are conducted to determine the effectiveness of the strategies tested. Measurements should be reasonable based on the objectives of the project and the need to inform future proposals and funding decisions. The FHWA agrees that evaluation should be appropriate and meaningful for guiding future funding decisions and increasing our knowledge base about the interaction of transportation and community and system preservation. The TCSP is a small pilot program to develop new, effective strategies that can then be used through regular transportation and land use programs. It is not intended to implement preservation activities nationwide. Therefore, the evaluation of strategies tested under TCSP is a principle outcome of the TCSP activities.

6. Research

The FHWA asked what gaps currently exist in our knowledge of transportation and community preservation practices. What experience—both good and bad—do we have with work in this field? What tools do practitioners need to achieve the integration of these issues in the transportation planning process and in project implementation?

Comments: One commenter noted that by reducing the cost of living and working outside central cities, U.S. investment in urban and rural interstate highways has been a major influence on the growth of suburbs and low density residential development. As urban population and congestion has grown, transportation investment has improved access to the suburbs, which in turn has encouraged decentralized, sometimes specialized, employment sub-centers. More is known about the impact of transportation investment on land use than the impact of land use patterns on transportation modes. This commenter also added that for a variety of reasons, continued transportation investment in new highway capacity, subsidizing alternative modes, zoning/growth management, and neotraditional planning have been the major policy approaches that have been adopted or pursued. There are very few examples where such programs have been in place long enough to determine cause-effect relationships. Nor have appropriate data always been gathered to develop solid estimates and forecasts of the impact of specific policies. This commenter said the TCSP program is an excellent opportunity to conduct research that would begin to determine the cause-effect relationships of these investments and policy approaches, and proposed the following research questions:

(a) What specific factors cause some people to leave cities and the suburbs to live in the rural fringe when simultaneously other persons choose to relocate in renewed urban areas to take advantage of urban amenities?

(b) Is there a ''self-selection'' bias that needs to be accounted for in evaluating the relationship between population densities, urban form, and transportation behavior? Is the apparent average travel time of approximately one hour per day masking the real differences in travel time that is occurring? What are the impacts of current congestion management and environmental protection policies on travel?

(c) The rule of thumb is that commute times to work have remained roughly unchanged over time at about 20–25 minutes. Are people adjusting their lifestyles to maintain relatively constant travel times? Similarly, do people have a roughly constant ''travel time budget'' of roughly one hour per day for all travel, or is it different, in different geographic regions? If so, how important is it to relieve congestion? Is there an opportunity to lay the foundation to identify differences in ''travel time budgets'' in different regions of the U.S.? What are the characteristics of those who travel less (or more) than these apparent constants?

(d) The intent of urban growth boundaries is to encourage high densities and minimize urban/suburban sprawl. In some instances, this strategy to contain urban sprawl is being weakened by smaller urbanized areas (within one hour commuting) seeking economic development in their jurisdiction. In what circumstances is this desirable? What are effective policies to limit undesirable outcomes. What opportunities are there to correct mispricing?

One commenter found that the FY 1999 **Federal Register** notice placed an emphasis on urban growth boundaries as a growth management tool, but argued that the successes of this tool are limited, and at best not very well understood. This commenter felt that analyses of the relationship among urban growth boundaries, highway planning, mass transit approaches, and housing affordability are needed before more real-world experimentation with this tool is conducted, and encouraged the FHWA to devote a significant portion of TCSP funds to research the effectiveness of land use control policies such as urban growth boundaries. This commenter urged the FHWA to direct TCSP funding toward evaluating current land use-air quality models and creating new models, as well as the relationship between highway expansion, land development patterns, and air quality.

Response: The FHWA agrees with the commenters that there is much to be learned about how to create livable communities. In section II of this preamble on strategic priorities and research for the FY 2000 TCSP, the FHWA requests grants and research to begin to address these questions.

7. Eligible Grant Recipients

Comments: One commenter encouraged the FHWA to allow non-governmental entities to apply for implementation grants to provide maximum flexibility to this new program. Another commenter said that given the intent of the TCSP program (to address the relationship between transportation and community and system preservation) it is important that all entities with responsibility for the transportation system be eligible to receive funding. This commenter recommended that toll authorities and agencies be added to the list of eligible recipients for this program particularly since toll authorities provide transportation services that would be provided by the department of transportation in another State.

Response: Eligible grant recipients were established by section 1221 of TEA–21. The September 16, 1998, **Federal Register** notice further clarified the legislative language by providing the following examples of units of local government: Towns, cities, public transit agencies, air resources boards, school boards, and park districts. If the toll authority is recognized by the State

as a unit of local government, then it is an eligible recipient for TCSP grant funds. Non-governmental entities are encouraged to form partnerships with eligible grant recipients as the project sponsor.

8. Local Matching Funds/Use of Other Federal Funds

Comments: One commenter observed that although the program encourages local matching funds, there is no requirement for a local match. This commenter advocated that local communities would take more ownership of projects that require a firm match of funds generated at the community level, and suggested a mandatory match ratio of 10 to 20 percent of local funds, with a related 80 to 90 percent of Federal funds. According to this commenter, the local match could come from local or statewide nonprofit groups or local, regional, or State governmental entities. Other commenters supported a local match requirement, and added that investment of other Federal funds (including transportation funds authorized under TEA–21, as well as Federal grants for Housing and Clean Water) would also demonstrate local commitment.

Response: The September 16, 1998, **Federal Register** notice, under ''Priorities for all Grants'' stated that applications for grants will be evaluated, among other factors, on a demonstrated commitment of non-Federal resources. As the commenter correctly stated, matching funds were not required. However, TEA–21 directs the Secretary to give priority to applicants that demonstrate a commitment of non-Federal resources to the proposed project. The FHWA agrees that providing local matching funds demonstrates a stronger commitment at the local level. In response to the comment regarding the use of Federal funds to demonstrate local commitment, the FHWA also considers this to be a demonstration of commitment. A number of successful TCSP applicants in FY 1999 combined grant resources from other FHWA, FTA, EPA and the Housing and Urban Development (HUD) programs to support an innovative project. However, since the TCSP funds are intended to be used for innovative activities, we did not review favorably proposals that could be funded with other traditional sources of funds.

9. Urban Versus Rural Emphasis

Comments: One commenter found that the FY 1999 **Federal Register** notice showed a bias toward larger metropolitan areas, noting that smaller metropolitan areas are under growth pressures and could also benefit from the TCSP pilot program. The suggestion was made that the next solicitation for projects should use a broader range of examples of potential projects to include both rural and small metropolitan areas. In contrast, another commenter suggested that the TCSP program should focus on urban areas, because those areas experience the most intense pressure involving land use, transportation and community preservation.

Response: The TCSP program is applicable in a wide variety of settings where communities are trying to address the integration of transportation and community and system preservation, and that TCSP funds are equally applicable in urban, suburban, and rural areas. As noted in this preamble, the FHWA will continue to seek a range of proposals, which would take into consideration the type of project, geographic location, and a mix of urban, suburban, and rural settings.

10. Federal Involvement in Local Land Use Actions.

Comments: One commenter claimed that through the TCSP program, the FHWA is engaging in local land uses issues where historically local governments and the electorate have made decisions. This commenter expressed concern that the TCSP pilot would provide a precedent by providing Federal funds to governmental entities and non-governmental groups to develop and adopt certain land use policies and restrictions.

Response: The FHWA has no intention of using the TCSP pilot to involve itself in local land use decisions. The FHWA is interested in promoting and funding sound, yet innovative planning that simultaneously considers transportation and community and system preservation in the long-term. The FHWA strongly supports the statewide and metropolitan planning process that was created by the ISTEA, and relies on States and MPOs to use these processes, agency partnerships, and public involvement activities to identify proposals that would be eligible for TCSP funds.

11. Review Process

Comments: One commenter strongly supported a joint review and approval process by the FHWA and the FTA.

Response: An interagency work group comprised of the FHWA, the FTA, the FRA, the OST, the RSPA, and the EPA has reviewed all of the FY 1999 letters of intent and full grant applications for the TCSP pilot. Participation has occurred at the field level (Regional and Division/State offices) as well as from each agency's headquarters office. Final decisions have been made by the FHWA Administrator based on the recommendations of this coordinated, interagency partnership.

Information From the Technical Review Panel

A 20-person panel including technical program experts in highway, transit, environment, railroad and planning reviewed the FY 1999 Letters of Intent and grant proposals for TCSP. The feedback from the interdisciplinary experts that participated on the review panel on the FY 1999 TCSP applications will be helpful to those developing proposals for FY 2000. The panel used the criteria that were established in section 1221 of TEA–21 and included in the **Federal Register** notice (September 16, 1998, 63 FR 49632). In addition, the panel looked for innovative strategies to meet the TCSP goals and geographic and population diversity to include proposals to address urban, suburban, rural, and disadvantaged populations. The panel noted that the more than 520 LOI's submitted were worthwhile projects but that because of funding limitations, it was necessary to identify only a very small number that best met the purposes of the pilot program. The following information from the panel discussions may be helpful to those applicants that were not selected in FY 1999, as well as for those applying in FY 2000:

(a) Purposes of the TCSP: Section 1221 of TEA–21 identifies five purposes for TCSP projects. The purposes are broad and include transportation efficiency, environment, access to jobs, services, and centers of trade, efficient use of existing infrastructure, and land development patterns. A key element of TCSP is exploring the link between transportation and land development patterns. The panel looked for innovative approaches that would test and evaluate the effectiveness of integrating land use planning and transportation planning to meet the purposes of TCSP. The panel looked for proposals that were developed to specifically address each of these. In some cases, a proposal would indicate that if congestion were reduced that would also increase access to jobs planned in the future. The panel looked for more proactive solutions, such as, working with agencies and the private sector organizations involved in employment and jobs to assure that the transportation system would meet the needs for access to jobs. Similarly, on environmental issues, some applications

limited the potential impacts of their proposal to air quality issues rather than addressing broader human and natural environmental issues such as watersheds, ecosystems, habitat fragmentation, and community and cultural impacts.

(b) Innovation: The TCSP is a small pilot program that is developing and testing new strategies that can be used by State and local agencies nationwide in their ongoing transportation programs. Funding in TCSP is not intended to implement community preservation practices nationwide, but to pilot test new approaches. As a pilot program, TCSP is an opportunity for agencies to support and encourage non-traditional approaches. Therefore, it may be appropriate to request TCSP to support a smaller innovative portion of a larger project that can be funded under other transportation funding. This may also help to increase the local matching share committed to the project which is also a factor in project selection. In addition, leveraging other Federal funds (e.g., EPA, HUD, or other highway and transit funding) as part of a larger project will also demonstrate local commitment to the project.

The review panel recognized that what is innovative in one area may not be innovative in another area and considered this in the evaluation. This is consistent with the legislation which seeks to encourage community preservation practices in areas that have not done this before as well as to reward and encourage localities that propose expanding on already successfully implemented preservation practices.

(c) Evaluation and Results: The evaluation component of TCSP projects needs to demonstrate the expected results of the proposed activities and measure the outcomes. This is critical for this pilot program so that other communities can learn from and apply the lessons learned. Therefore, clearly stating the objectives of the projects and activities and the anticipated results were important in successful proposals. In addition, successful proposals included a schedule of major milestones for the project. If the project was a planning study, the application demonstrated the likelihood that the results or recommendations of the study will be implemented, by whom and when.

(d) Partnerships: The TCSP encourages public and private participation in proposed projects. In addition, TCSP encourages including non-traditional partners on the project team. The type and scope of the project will determine the best mix of partners and whether these should include members of the general public, as well as environmental, community, business, and other groups. The roles and functions of the partners should also be explained. For example, are these groups to be surveyed or educated or will representatives of these groups serve on the project team or on an advisory group?

FY 1999 TCSP Grant Awards

The activities and research funded under the TCSP program will develop, implement and evaluate transportation strategies that support transportation and community and system preservation practices. The program will demonstrate transportation strategies that incorporate the short- and long-term environmental, economic, and social equity effects to help build sustainable communities. Examples of preservation strategies being developed by TCSP grantees in the first year of the program include transportation initiatives which: integrate land use and transportation planning; balance economic growth, environment and community values; create a long range vision for a community or region; reuse existing infrastructure to meet the purposes of TCSP; develop urban, suburban and rural strategies for communities; and establish non-traditional partnerships to meet TCSP goals. Attachment I to this notice lists the grants selected for TCSP funding in FY 1999 and includes a brief abstract of each project.

Section II: Requests for FY 2000 TCSP Grants

Introduction

The grants and research funded under the TCSP program will develop, implement and evaluate transportation strategies that support transportation and community and system preservation practices. The program will demonstrate transportation strategies that incorporate beneficial short-and long-term environmental, economic, and social equity effects to help build sustainable communities.

TCSP is included in the President's Livability Initiative. This initiative strengthens current Federal programs, proposes new ones to help create livable communities, and includes programs in the EPA, the HUD, the Department of Interior (DOI), the Department of Justice (DOJ) and other agencies in addition to the DOT (see *http://www.whitehouse.gov/CEQ/011499.html*). Within the DOT, the Livability Initiative will help ease traffic congestion and promote community livability through a 15 percent proposed increase for several DOT programs that provide flexible support to State and local efforts to improve transportation and land use planning, strengthen existing transportation systems, and promote broader use of alternative modes of transportation. The Administration's Livability Agenda includes increased funding for mass transit, Congestion Mitigation and Air Quality Improvement Program (CMAQ), Transportation Enhancements, and TCSP. The TCSP pilot program in FY 2000 is proposed to increase from $25 million authorized under TEA–21 to $50 million.

In FY 1999, the FHWA used a two-step procedure to solicit and select TCSP proposals. Applicants were first requested to submit brief LOIs. The FHWA selected a small number of applicants based on these LOIs to prepare full grant requests for further consideration. After the review of the full grant request, 35 proposals from agencies in 28 States were selected to receive TCSP funds. In FY 2000, the FHWA has changed this procedure and is using a one-step process. The FHWA is no longer asking for LOI, but only a grant request. From the grants submitted on July 15, 1999, the FHWA will select those funded in October, 1999.

With almost $400 million requested in FY 1999, competition for these funds is expected to remain high. Grants may be spent over a period of up to two years but no commitment can be made for second or subsequent years of grant awards. Thus, phased projects should stand alone and be capable of being implemented and producing results in each phase. A sample outline and format for FY 2000 TCSP grant requests is provided in Attachment II to this notice.

Eligible Recipients

State agencies, metropolitan planning organizations and units of local governments that are recognized by a State are eligible recipients of TCSP grant funds. This would include towns, cities, public transit agencies, air resources boards, school boards, and park districts but not neighborhood groups or developers. While non-governmental organizations are not eligible to receive TCSP funds under section 1221 of TEA–21, these organizations that have projects they wish to see funded under this program are encouraged to form partnerships with an eligible recipient as the project sponsor.

States or MPOs may be both a project sponsor and endorse other activities proposed and submitted by a local government within its boundary. A

State or MPO may consider packaging related activities for submittal as one larger grant request.

Purposes of the TCSP Grant Program

Activities funded under TCSP should address and integrate each of the purposes of the program listed below. Priority will be given to those proposals which most clearly and comprehensively meet and integrate the purposes and are most likely to produce successful results. How well proposed projects achieve each of these purposes will be a principal criterion in selecting proposals for funding. Applicants should develop proposals that specifically address these purposes. Grant proposals should address how proposed activities will meet and integrate all of the following:

1. Improve the efficiency of the transportation system.

Proposals for TCSP activities should identify, develop and evaluate new strategies and measures of transportation efficiency that are based on maximizing the use of existing community infrastructure, such as highways, railroads, transit systems and the built environment. Proposals should address the transportation system as a whole rather than focusing on one mode of transportation. This may include for example, improving the integration of various modes of travel such as highway, transit, pedestrian, bicycling, and rail or improving the efficiency of port, rail and highway connections for freight and jobs. Performance measures should include a focus on movement of people and goods and access rather than movement of automobiles, and on services provided rather than vehicle miles traveled.

2. Reduce the impacts of transportation on the environment.

Proposals for TCSP activities should explore the long-term direct and indirect social, economic and environmental impacts of transportation investments on the natural and built environment. Consideration of environmental factors should not be limited to air quality but should also address, if appropriate, ecosystems, habitat fragmentation, water quality as well as community and cultural issues such as disadvantaged populations and environmental justice. Performance measures should relate the results of TCSP activities to the larger community and regional environment and the transportation system.

3. Reduce the need for costly future public infrastructure.

Proposals for TCSP activities should describe how they will reduce the need for costly future public infrastructure investment or create tools and techniques to measure these savings over the life cycle of the activities. Performance measures should include projected life cycle savings obtained through avoiding future investments or maintenance.

4. Ensure efficient access to jobs, services and centers of trade.

Proposals for TCSP activities should clearly demonstrate how they improve efficient, affordable access to jobs, services and centers of trade and address benefits for disadvantaged populations. This could also include the use of new technologies that increase access for people and businesses while reducing the need to travel. Performance measures should include improved access to jobs and services, and improved freight movements.

5. Encourage private sector development patterns.

Proposals for TCSP activities should identify and test effective strategies to encourage private sector investments that result in land development patterns that help meet the goals of this pilot program. Effectively linking land use and transportation is a key feature of TCSP. Performance measures should demonstrate and monitor changes in development patterns and private sector investment trends or opportunities resulting from TCSP-related activities.

Priorities for Selection of Grants

In addition to meeting the purposes of TEA–21 discussed earlier in this preamble, applications for grants will be evaluated based on the following factors:

a. A demonstrated commitment of non-Federal resources. Although matching funds are not required, priority will be given to projects which leverage non-Federal funds and take advantage of in-kind contributions such as maintenance agreements, land donations and volunteer time. The contribution of local funds and resources for a project demonstrates local commitment to a project and increases the likelihood that it will be fully implemented. In addition to non-Federal funds, grantees are encouraged to pursue other Federal resources to support Livability Initiatives such as Transportation Enhancement, Congestion Management and Air Quality funds, as well as HUD, EPA, DOI and other programs. A description of the President's Livability Initiative can be found on the White House Web site (*http:www.whitehouse.gov/CEQ/011499.html*) and click on ''Virtual Library.''

b. An evaluation component. The plans to evaluate the project's objectives and outcomes is a key element of the grant proposal. The evaluation plan should include major milestones and deliverables for the project. See the discussion on Evaluation in this section.

c. An equitable distribution of grants with respect to a diversity of populations. The FHWA will also be ensuring the equitable distribution of funds to geographic regions, including an appropriate mix of rural, suburban and urban activities. Applicants should describe the populations that will be served by the project, including disadvantaged populations.

d. Demonstrated commitment to public and private involvement including the participation of non-traditional partners in the project team. Such partners might include public utility operators, social services agencies, community groups, environmental organizations, non-profit organizations, public health agencies, private land development organizations and real estate investors. The TCSP also envisions non-traditional partners working on the project team and help develop the assumptions and scenarios. This approach would be broader than public involvement processes where transportation professionals prepare projects, scenarios and assumptions and present these in public forums for review and comment. In the proposal, applicants should describe the role and commitments of their partners.

Category of Grantee

The TCSP was intended to support localities which have already begun some preservation practices and to encourage those areas that are just starting. The legislation referred to grants to these types of grantees as implementation grants and planning grants, respectively. These terms proved to be confusing to applicants in FY 1999 because they are common terms used in transportation projects. Many interpreted the terms to describe the activities conducted under a specific grant proposal rather than describing the community preservation activities of the grantee. Therefore, in FY 2000 the FHWA is asking grant applicants to identify themselves as either: (a) grantees that are just beginning to start community preservation practices, or (b) grantees that have already initiated transportation related community preservation programs and policies. This later category would include grantees who have coordinated with State and locally adopted preservation and development plans; integrated transportation and community and system preservation practices; promoted investments in transportation

infrastructure and transportation activities that minimize adverse environmental impacts and lower total life cycle costs; or encouraged private sector investments and innovative strategies that address the purposes of the TCSP program.

Eligible Activities

Activities eligible for TCSP funding include activities eligible for Federal highway and transit funding (title 23, U.S.C., or Chapter 53 of title 49, U.S.C.) or other activities determined by the Secretary to be appropriate. This allows a broad range of transportation activities to be funded. Grants will be awarded for new and innovative transportation activities that meet the purposes of the TCSP program, but remain unfunded under the current Federal-aid program.

Strategic Priorities for FY 2000 TCSP

Grants will be awarded for activities that meet the purposes of the program described above and are innovative. The goal of the TCSP is to develop a broad range of strategies for urban, suburban and rural communities to help promote liveable communities through transportation investments and operations. The legislative language that created TCSP is general and provides States, MPOs and local agencies flexibility to create innovative approaches to addressing the goals. As the program evolves over the next four years, the FHWA will use individual project evaluations conducted by grantees, the results of research, and overall program evaluation to determine the strategic priorities for TCSP. This information is not yet available since this is the first year of the program and grants were just recently awarded. Therefore, in the second year of the program, rather than setting specific strategic priorities, the FHWA is providing information on the proposals funded in FY 1999 and several suggestions to prospective applicants of areas that are of interest to the FHWA. The FHWA continues to seek additional strategies that are innovative and can be replicated by others. Applicants should highlight innovative and unique aspects of their proposals, and how the results of their proposal will further the purposes of the TCSP.

Examples of preservation strategies being developed by TCSP grantees in the first year of the program include transportation initiatives which: Integrate land use and transportation planning; balance economic growth, environment and community values; create a long range vision for a community or region; reuse existing infrastructure to meet the purposes of TCSP; develop urban, suburban and rural strategies for communities; and establish non-traditional partnerships to meet TCSP goals. A common theme in the proposals was that the objectives were to use transportation solutions in unique ways to help to meet long-term community goals rather than to only address current mobility needs. Applicants should not seek to duplicate the strategies being evaluated in FY 1999 unless there is a significant change in the scope, application, or results of the strategy.

The FHWA is also interested in proposals which measure the results and broad impacts on communities of current preservation practices including urban growth boundaries, infill development, and land use changes. This suggestion is also included in the request for research proposals below as an opportunity for an independent assessment of the outcomes of current preservation practices. Other areas that may be considered include integrating community health and safety goals with transportation to promote livable communities; planning or implementing regional and local strategies to mitigate greenhouse gas emissions; using technology and communications that provide people and businesses with improved access to goods and services to promote livable communities; and enhancing intermodal and freight access to promote economic growth and access to jobs in communities.

The FHWA is particularly interested in supporting projects that are ready to begin and have plans to collect and document results that can be shared with others quickly and successfully. The proposal should highlight when the proposal would be initiated and when results are expected.

Evaluation

Every proposal funded under the grant program should include a description of the applicant's plans for monitoring, evaluation and analysis of the grant activity, and for providing the results of this analysis to the FHWA. This information is necessary to provide an opportunity for the DOT, States, MPOs, and local governments to learn more about the practical implications of integrating land development, transportation, and environmental decisionmaking. The grant request may include funding for travel for one representative to attend two national workshops to present the plans, status, and results of the project.

The measures used to evaluate project results should be based on the goals and objectives of the project. In addition to individual project evaluations, an overall program evaluation will be conducted by the FHWA under the research component of the program described in Section III of this notice.

Developing measures to determine the results of the projects is difficult and there is no general consensus on operative measures. A resource guide on program evaluation for TCSP projects is available on the FHWA Web page (*http://tcsp-hwa.volpe.dot.gov/index.html*). Methods to measure and evaluate current and future performance may include, for example:

1. Quantitative assessments such as measurement of changes in traffic flow and mode choice (e.g., increased pedestrian and bicycle traffic), environmental impacts and reduced vehicle miles of travel or number of trips;
2. Analytic procedures which forecast the current and future impacts of projects, such as, travel demand, land development, or economic forecasting; or
3. Qualitative assessment, such as, interviews, surveys, changes in local ordinances, or other anecdotal evidence.

Relationship of the TCSP to the Transportation Planning Process

The TCSP will complement, improve and enhance the Statewide and MPO planning process created by the ISTEA, and refined by TEA–21. This process promotes the ongoing, cooperative and active involvement of the public, transportation providers, public interest groups, and State, metropolitan and local government agencies in the development of statewide and metropolitan transportation plans and improvement programs (23 CFR part 450).

Grant proposals should clearly demonstrate the coordination and consistency with appropriate statewide and metropolitan transportation planning processes. TCSP applicants are encouraged to notify the appropriate State DOT and MPO of their application to ensure this coordination. In addition, the FHWA will post the list of FY 2000 applications and titles of the proposals on its Web site as soon as it is available.

The DOT fully supports this planning process, which has brought diverse constituencies and government agencies together, and views the TCSP activities as a logical step in the continuing improvement of transportation planning at the State and regional level. The TCSP can help broaden the scope and impact of the planning process to better integrate land development planning, environmental goals and objectives, economic development, social equity considerations, and other private sector

activities. The integration of interest groups, investors and developers through partnering with government applicants is a goal of the program. The TCSP activities also consider incorporation of much longer planning horizons and consider the impacts on future generations.

Activities funded by this program may be used to test or implement new, innovative planning methods and programs that significantly enhance the existing statewide and MPO transportation planning processes. The TCSP funds are intended to leverage new transportation and community preservation initiatives rather than to fund the ongoing planning activities of States and MPOs. The TCSP-funded activities should demonstrate coordination with the State or MPO to ensure the planning process is not circumvented. In addition, activities should encourage and improve public involvement in the overall planning process as well as in the individual project.

Construction projects funded by the TCSP will ultimately be included in an approved State or MPO TIP. The TCSP funds should not be requested for projects that have already been scheduled for funding and are in the current State or MPO TIP. Highway and transit projects which either use Federal funds or require Federal approvals, and are in air quality nonattainment or maintenance areas, should be included in an air quality conformity analysis required as part of the transportation planning process. Because TCSP projects may target improved air quality as part of their broader goals, documentation of the beneficial air quality impacts of the project will be important.

Non-construction activities funded by the TCSP, such as the development of regional plans and policies, project evaluations and land development code changes, may not need to appear in a statewide or MPO TIP, but should still have the support or endorsement of the State or MPO. Planning activities funded by TCSP should be reflected in the metropolitan area's Unified Planning Work Program. Non-construction activities may result in changes to existing State and MPO plans and, therefore, need coordination with other jurisdictions within a metropolitan region or State.

Schedule and Administrative Processes for FY 2000 Applications

There are several options for the administration of grants under TCSP. The FHWA has established financial management systems with the State Departments of Transportation and anticipates that most TCSP grants will be channeled through this established process. However, if another process such as a cooperative agreement or grant through another eligible agency (e.g., a public transit agency) is preferred, the applicant can work with the appropriate FHWA Division Office to develop a different funding mechanism.

An applicant should send four (4) printed copies and a diskette with a file (optional, as described in Attachment II of this notice) of the TCSP grant request to the FHWA Division Office in the State in which the project is located by July 15, 1999. Applicants should note that the FHWA is not requesting the 4-page LOI's that were used for the FY 1999 selection process. The FHWA will use input from field staff and an interagency technical review panel similar to the process used in FY 1999 to evaluate proposals that will be funded. Questions about the grant program should be directed to the FHWA Division Office in the State in which the applicant is located. The time line for FY 2000 applications for TCSP and a proposed time line for FY 2000 follows:

FY 2000 TIME LINE FOR TCSP

TCSP milestones	FY 2000
Issue Federal Register Notice Request for FY 2000 Grants, Research proposals, and comments.	May 1999.
Grant requests and comments due to FHWA Division Offices.	July 15, 1999.
Research proposals due to FHWA.	Sept. 15, 1999.
Grants awarded	Oct. 1999.
Research projects awarded	Jan. 2000.

Section III: Requests for FY 2000 TCSP Research Proposals

Introduction

The TCSP includes a comprehensive research program to investigate the relationships between transportation, community preservation, and the environment, and to investigate the role of the private sector in shaping such relationships. The research program also includes monitoring, evaluation, and analysis of projects carried out under the grant program.

Program Evaluation and Outreach

Program and project evaluation is an important part of the TCSP. To meet the purposes of the pilot program and develop strategies and methodologies that can be used by localities, measurable results and a means to disseminate this information are needed. In addition to the evaluation of each project conducted by the grantee, the FHWA will conduct an overall program evaluation combining the results of the grants and the research program to help set the strategic direction and future priorities for the TCSP. An important measure for the success of TCSP is the extent to which the results and best practices from the pilot program are used effectively by government agencies, the private sector, and others.

Under the research component of TCSP, the FHWA will establish outreach, technical assistance, and other means to share and implement the results elsewhere. Current outreach plans include **Federal Register** notices, the grant workshop, the FHWA web site information, and participation in other conferences and meetings.

Research Program

The goal of the research program is to build a knowledge base of work in this field that will enable State, regional and local government agencies, the private sector and neighborhood groups, through transportation activities, to help shape sustainable communities that meet current and long-term environmental, social equity, and economic goals. With coordination and input from its partners and stakeholders, the FHWA will identify and initiate needed research to support the purposes of the TCSP. The research program is integral to the TCSP, and it will support and complement the activities conducted through planning and implementation grants. Likewise, applied research activities that may be a part of a grant activity would be beneficial to the research program.

This notice requests comments and suggestions on the research program and also solicits specific research proposals. The FHWA anticipates that most of the TCSP funds will be allocated for grants and that limited funding will be available for research. The FHWA is soliciting comments on the research needs to support the TCSP and will initiate TCSP research to meet the needs that are identified. In addition to FHWA conducted research under the TCSP, the FHWA is soliciting research proposals for consideration in funding in FY 2000. The research may be conducted through cooperative agreements with organizations, contract support, or through State, local, and MPO grants.

The FHWA emphasizes that it anticipates that very limited funds will be available for research in FY 2000. The FHWA proposes to solicit research

proposals that address the following areas:

1. Evaluation of results of current community preservation practices. Information is needed on the specific outcomes of current statewide, regional, and local community preservation practices, such as, green corridors, smart growth, urban growth boundaries, higher density development, and land use controls to improve transportation efficiency. Research should include both costs and benefits of these initiatives and performance measures.

2. The FHWA is seeking research on the development of needed tools and methodologies to support decision makers. Transportation-related tools and analytical techniques will be enhanced to help support the State and local decision makers in taking a longer term view and balancing economic, social equity, and environmental goals.

Attachment I: FY 1999 TCSP Grant

Transportation and Community and System Preservation Pilot Program

Project Description Summaries

Alaska

01: Municipality of Anchorage: ''Anchorage Metropolitan Area Transportation Study (AMATS) Community Transportation Cooperative'' $250,000

Re-design the public involvement program by determining the most effective processes and technology to empower the public, to facilitate communication, and to motivate the community to engage in meaningful dialogue in land use and transportation issues. Apply the new program to the Ship Creek Multimodal Transportation Plan, an area with controversial land use/transportation/community preservation issues located adjacent to the downtown Anchorage Central Business District.

Arizona

05: City of Tempe: ''Transit Overlay District and University Drive Subarea Study/Integrated Transportation Plan, Model, and Local Transit-Oriented Design Guidelines'' $225,000

Complete the community-driven elements of the comprehensive transportation and land use plan.

Activities include:

- A transportation subarea study and implementation plan for University Drive that will coordinate neighborhood goals to narrow/traffic calm the street while identifying strategies to combat a range of area transportation issues with an approach that emphasizes both non-SOV transportation and community redevelopment.
- Creating a transit-oriented overlay district model, which can be supported by neighborhoods and the development community. Implement on University Drive and in the NewTowN service area. Apply to other parts of Tempe and communities.

California

13: San Francisco Planning Department: ''Land Use Support for the Mission Street Transit Corridor'' $177,000

Develop a plan for transit-oriented development in the Mission Street Transit Corridor and its diverse mix of mostly medium- and low-income residents, who depend on transit for journey-to-work trips. Prepare a transit-oriented land use plan for the Balboa Park Station at the southern end of the corridor and use as a model for how transit-oriented development can increase the city's share of new mixed-use residential and commercial development, how it can strengthen land use and transit links, how it can increase transit use, how it can encourage mixed-use residential and commercial infill sensitive to neighborhoods, how it can refocus the city's neighborhoods towards transit and away from the automobile, and how it can ease some of the burdens placed on private-sector development.

45: City of Escalon: ''Escalon High School Linkage Project'' $150,000

Link the community high school with a variety of land uses via two separate alternative transportation corridors: (1) The Southern Link—A pedestrian plaza, roadside park and woonerf on a portion of SR–120 abandoned as a result of highway realignment; and (2) The Northern Link—A Class-I bicycle lane along Miller Avenue providing a direct link between the high school and community center and a bicycle/pedestrian activated crossing signal. Mitigate the impacts associated with the widen roadways. Populations benefitting from the project include both students and senior citizens.

64: Mono County: ''Lee Vining Community Planning Project'' $182,000

Create a consensus-driven vision to provide transportation and land-use planning guidance to a small town that serves as a main gateway to Yosemite National Park. Identify the community's role in balancing the need for tourism with the preservation of community character and quality of life. Balance the multiple needs and users who depend on a major state highway facility serving as a local Main Street. Identify mitigation opportunities for seasonal traffic impacts in and around the park, focusing on the proper integration of the YARTS with Lee Vining and other communities bordering the park. Provide a model for intergovernmental cooperation and public involvement for unincorporated rural areas struggling with transportation and land-use issues.

Connecticut

01: Hartford Metropolitan Area: ''Picture It Better Together: Taking Transportation Goals From Policy to Reality'' $480,000

Examine the links between transportation, land use, and economic development at both the neighborhood and regional level by researching sustainable development practices informed by local and regional perspectives. Identify traditional forms of circulation and land use patterns in three prototypical communities—one urban, one suburban, and one rural—then plan for integrative patterns of development in each. Research and form best development practices, business incentives, and public/private support for these strategies at the regional level and facilitate discussions about regional interdependence. Develop human-scaled land use designs at the neighborhood level to integrate multiple transport modes and address traffic conflicts.

District of Columbia

01: Metropolitan Washington Region: ''Implement Adopted Transportation Vision for the Metropolitan Washington: Develop Circulation Systems and Green Space'' $380,000

Implement two key components of the region transportation vision: (1) improvements of circulation systems within the regional core and regional activity centers and (2) integration of green space into a regional greenways system. Involve key agencies, officials, and stakeholders and identify financial resources for project implementation. Design comprehensive regional programs which identify priority projects for implementation and encourage the inclusion of these projects into the region's Constrained Long Range Plan (CLRP) and Transportation Improvement Program (TIP).

Florida

05: Gainesville Metropolitan Area: ''Develop and Apply Integrated Land Use and Transportation Sketch Planning Methods'' $150,000

Develop sketch planning methods and simple model refinements to better estimate the effects of various land use, non-motorized transportation and transit strategies on travel choices and behavior. Develop analytical methods to post-process certain outputs of the traditional four-step travel demand forecasting process to better represent the land use-transportation connection. The goal is not methodological elegance but rather ease of rise and improved predictive power. Activity addresses all modes of travel, particularly as they relate to different land use characteristics within the metropolitan area.

Idaho

01: Ada/Canyon Counties: ''Treasure Valley Futures: New Choices for the American West'' $510,000

Develop an education process which defines barriers to attaining these goals and identifies a range of alternative choices for policy implementation that can be incorporated directly into the existing land use and transportation policy framework. The project should result in an increase in the number of policy decisions being made by agencies and other groups supporting local and regional objectives. The project approach is designed to work within the Treasure Valley's fragmented political framework and deeply held beliefs concerning private property rights.

Kentucky

01: Central Bluegrass Region: ''An Integrated Model for Transportation Planning and Context Sensitive Design'' $435,000

Produce two linked products that will aid in realizing and attaining TCSP goals. Provide innovative guidance and strategies to aid communities in reconciling development pressures with the need for livable communities through the Corridor Master Planning Handbook. Detail the fusion of visualization software with group facilitation and decision techniques for purposes of promoting consensus across a diverse community regarding roadway improvements through the Visualization Guide. These tools will address local planning questions that arise from regional concerns and aid in understanding the link between them. The project focuses on the development challenges found in the historic Bluegrass Region of Kentucky and involves both traditional and non-traditional partners.

Louisiana

01: New Orleans Metropolitan Area: ''Transportation/Community Systems Optimization Through Non-Traditional Partnering and Infrastructure Prioritization'' $450,000

Develop and implement various mechanisms to affect land use growth factors and system tools in order to guide transportation development, community and system preservation and regional metropolitan sprawl. Traditional tools and non-traditional approaches will be employed. Develop regional strategies and tools leading to a long-range plan and a map of growth/sprawl boundaries for a regional livability standard based on balance and sustainability. Develop a capital project management plan for the effective and efficient timing and construction of transportation infrastructure, and establish a framework for the control and monitoring of regional metropolitan sprawl. Form coalitions of interest groups in the region to realize the level of knowledgeable voter tax support to implement sustainable land use and transportation growth measures.

Maryland

04: State of Maryland: ''Maryland Integrating Transportation and Smart Growth (MINTS)'' $450,000

Use integrated Smart Growth and transportation planning strategies to: maintain and enhance existing communities and contribute to their quality of life and economic vitality; demonstrate how investments in transportation strategies can encourage well planned growth where it is desired and discourage new development where it is inconsistent with Smart Growth objectives; and use sound growth management to facilitate community conservation, preservation of infrastructure capacity, and ''smart'' transportation strategies. The project will be carried out in 2–3 locations representing two distinct growth-management settings: (1) an urban community with challenges to improve the efficiency of the existing transportation system, to conserve the community, and to prompt re-development and infill development and (2) in exurban and suburban areas with sprawling development patterns which threaten rural resource protection goals, generate highway and other infrastructure needs, and environmental and transportation system efficiency issues.

Michigan

05: Saginaw Metropolitan Area: ''Retrofitting Anytown, USA'' $48,000

Conduct a public design charrette to look at retrofitting two intersecting suburban corridors, making the area both pedestrian and transit friendly. Focus on issues of pedestrian mobility and accessibility, and public transit with the ''visioning'' and recommendations providing planning directions to local agencies and private enterprises to retrofit the existing auto-dominated environment.

12: Lansing/Tri-County Region: ''Regional Growth: Choices for Our Future'' $355,000

The Tri-County Regional Planning Commission, representing Clinton, Eaton and Ingham Counties and the Lansing, Michigan metropolitan area, has initiated Regional Growth: Choices For Our Future to Develop a series of innovative pilot planning techniques which will demonstrate enhanced planning methods which may be readily transferred to similar efforts nationwide. Formulate consensus on a new land use patterns and on new policies to guide land use change. Evaluate and track successful implementation by creating a ''Sprawl Index'' and a comprehensive evaluation program using real cost studies and fiscal impact analysis, analysis of how transportation investment decisions and asset management strategies effect urban sprawl, gathering information on why people relocate, and developing monitoring measures.

Missouri

06: Kansas City Metropolitan Area: ''SMART CHOICES—Options for Creating Quality Places'' $600,000

The Mid-America Regional Council (MARC), project will build on regional and local planning efforts addressing the better integration of transportation investments and land use decisions. Provide tools specifically designed for Midwestern communities to promote urban and suburban development compatible with sustainable community design. Activities include: (1) the development of Transit-Oriented Development prototypes, education, and other implementation strategies; (2) a cost-of-development analysis that will provide fiscal information relative to alternative development; and, (3) an interactive compact disc to communicate information on alternative design concepts and specifications.

Montana

06: City of Laurel: ''Transportation and Community Sustainability Plan'' $85,000

Develop a 'Transportation and Community Sustainability Plan' for the City of Laurel. Activities include: (1) analyzing the traffic and community impacts of major transportation features; (2) analyzing the overall transportation system (current and planned) and its implications for sustainability; (3) analyzing the land use patterns and their contributions to the traffic situation; (4) analyzing the sustainability of the community's commercial core in the face of transportation-related threats; (5) analyzing non-motorized travel; (6) analyzing how different assumptions in transportation and land use can lead to more sustainable scenarios for the future; and (7) creating an action plan for a more sustainable Laurel.

New Jersey

14: Northern New Jersey: ''Preparing Modern Intermodal Freight Infrastructure to Support Brownfield Economic Redevelopment'' $700,000

Facilitate the redevelopment of abandoned industrial brownfield sites by freight related businesses at the port, airport, and rail terminals in northern New Jersey. Leverage statewide and regional resources to overcome current constraints affecting brownfield redevelopment. Conduct a market analysis, compile an inventory of promising brownfield sites, perform outreach to communities and carry out detailed case studies. Completed plan will address needed transportation access to brownfield sites and effectively market the sites for freight related activities and provide new employment opportunities for urban residents, avert inefficient sprawl, reduce the volume of trucks on regional roads and safeguard the environment.

34: State of New Jersey: ''Transit-friendly Communities for New Jersey'' $535,000

Work with diverse community partners to develop specific ways that New Jersey towns can become more ''transit friendly,'' by building on both NJT's initiatives to make train stations themselves ''passenger friendly'' and on statewide ''smart growth'' initiatives to reduce sprawl and encourage new development within walking distance of transit stations. Develop educational workshops, technical assistance and demonstration projects in four to six communities to shape a new vision for linking train stations to community enhancement. Implement a series of short-term, catalytic demonstration projects in the districts immediately around train stations to spur community involvement and leverage local investment and participation. Maximize its relevancy to the state's diverse community involvement and leverage local investment and participation. Leverage the talents and resources of NJT's non-profit and government partners to shape the future of communities around NJT stations well into the 21st Century. Develop models for other New Jersey communities to follow in future NJT projects. Ensure that communities understand how transportation investments can enhance the environment, create strong downtown centers, and improve quality of life.

New York

02: City of Troy: ''Waterfront Redevelopment'' $70,000

Develop a Transportation and Land Use Study as a part of a redevelopment planning process for South Troy's Working Waterfront. Address the needs of this long underutilized waterfront and facilitate the area's development as an appealing and efficient business, residential, cultural, and recreational center. Inventory and analyze the existing land use pattern and transportation system, evaluate redevelopment alternatives, and identify and implement a series of compatible land use and transportation strategies and projects for the study area. Combine planning techniques including community workshops and visioning sessions, design charettes, and planning and architecture student involvement. Build upon collaborative working relationships with traditional and nontraditional partners including community-based, organizations and nonprofit agencies, as well as private, public, local, regional, County and State agency representatives. Develop a plan to maximize efficiency in transportation access while minimizing environmental and related impacts of the proposed redevelopment.

North Carolina

06: Research Triangle Region: ''Regional Development and Mobility Principles'' $450,000

Develop strategies to change the 6-county Research Triangle region's current pattern of development from a conventional suburban expansion model to one based more on principles supportive of compact urban form with walkable. Activities include: A *detailed description and analysis* comparing the land use, transportation, fiscal and environmental implications of the preferred regional development pattern to the current development pattern. A *comprehensive set of strategies* composed of design and development standards, infrastructure policies, fiscal tools, and legislative authority needed to achieve the preferred development pattern. A *set of computer visualizations* and supporting explanatory material showing how places within the region could develop differently under the preferred pattern or under the current pattern. A *community outreach and feedback effort* to explain the project's work, monitor communities' views of the work, and revise the work to address community concerns.

Ohio

10: Woodmere Village, Cleveland: Making Chagrin Boulevard a ''Place'' Instead of a Dividing Road: A Greater Cleveland Demonstration Project in Woodmere Village, Ohio'' $195,000

Redefining Woodmere Village, a small, predominantly African-American suburb of Cleveland, in a highly creative manner. Create an environment for small town community interactions while simultaneously handling 26,000–36,000 ADT on its ''Main Street.'' Provide a local demonstration project which balances the interests of ''home,'' ''place'' and business with the goal of commuter convenience. Set the stage to adopt new zoning and land use policies to encourage denser, more sustainable development in the future.

12: City of Dayton: ''Tool Town'' $300,000

Evaluate the existing buildings, transportation infrastructure, and utilities and the development of a schematic campus master plan with capital costs, an implementation schedule, and funding strategies. Tool Town will make more efficient use of existing transportation network and other infrastructure and reuse land and the built environment, both of which will curb additional regional sprawl. The effort will also create jobs that can be filled by Dayton residents; support the long-term viability of tooling and machining in our region; help tooling and machining industry compete globally; and retain these secure, high-paying jobs in the United States.

Oregon

05: Portland Metropolitan Area: ''Urban Reserve Planning for the Portland, Oregon Metropolitan Region'' $500,000

Develop master planning for the area must occur before development begins to ensure efficient provision of services and infrastructure and effective environmental conservation. Help local governments address the difficult transportation, land-use and environmental challenges of the area, including: Streams on the recent federal listing of endangered fish; Mitigation of addition impacts on severe downstream flooding; Local topography that creates a serious challenge in transitioning from a few two-lane country roads to a system that can serve the expected future population.

11: Willamette Valley: ''Evaluate the Transportation Impacts of Possible Futures in Oregon's Willamette Valley Organization'' $600,000

Provide a unique, long-range, regional focus on: (1) the transportation consequences of continuing current land development patterns in the Valley; (2) the benefits possible through alternative, transportation-efficient development patterns that are based on more compact growth and urban designs that reduce reliance on the automobile; and (3) the benefits possible through certain changes in the transportation system. Focus on all current and future travel between the metropolitan areas, cities and towns in the 11,500 square mile Valley. Activities include: (1) the development, modeling and analysis of possible future land use and transportation scenarios; (2) public outreach and education; (3) development of recommended actions and implementation strategies to achieve a preferred future; and (4) development of regional benchmarks and a monitoring framework to track progress.

Pennsylvania

05: Centre County: ''Creating a Community-based Sustainable Future for I–99: A Watershed Approach'' $500,000

Establish a collaborative, multi-municipal model interchange overlay district ordinance to better manage and guide development surrounding the 12 interchanges in Centre County of I–99 in Centre County and create a watershed-wide (mid-Bald Eagle watershed including the Spring Creek Basin), community-based collaborative land use and sustainability plan to meet the long-term needs of the community.

08: Philadelphia Metropolitan Area: ''Implement Transit Oriented Development in the Philadelphia Metropolitan Area: Schuylkill Valley Metro (SVM) Corridor Station Area Planning and Implementation'' $665,600

Implement TOD principles and induce private sector investment in TODs by: (1) creating an innovative LEM Product that provides mortgage financing for housing in transit dense areas, (2) undertaking a region wide advocacy project to sow the seeds of public support for TODs, (3) producing a transit corridor-specific real estate market demand feasibility study that provide a greater level of understanding of TODs within the real estate community (thereby reducing the perceived risk to developers) and (4) preparing zoning ordinance language, to implement focused station area plans, that provides a supportive regulatory environment for TOD. Innovative activities include: (1) the proposed LEM Product; (2) the timing of the planning and development regulations work and garnering public support for TOD, well in advance of implementing a major transportation investment; and (3) basing the development controls on a corridor and station-focused real estate market study.

Rhode Island

11: City of Providence: ''Olneyville Square Inter-modal Transit Center'' $600,000

Revitalize neighborhood by using transportation and intermodal facilities that will capitalize on an urban river, recycle brownfields, promote home-ownership and support small business development. Focus on the commercial heart of the neighborhood, which was once the second largest commercial area in the City, by: siting a public Transit Center, linking the Woonasquatucket Greenway/Bikeway project to the Transit Center, and re-connecting Olneyville Square and the Transit Center to the West Broadway neighborhood.

South Carolina

01: Berkeley, Charleston, Dorchester Region: ''Development and Implementation of a Model Program Strategy to Link Transportation, Infrastructure and Land Use Planning for the Berkeley Charleston Dorchester Region of South Carolina'' $300,000

Evaluate past and future growth patterns and promote sustainable growth in the Berkeley, Charleston, and Dorchester region, the Berkeley-Charleston-Dorchester Council of Governments (BCDCOG). Utilize satellite imagery to graphically depict growth patterns over twenty years in the region and using the identified patterns to project impacts for the future. Estimate the costs of sprawl. Evaluate environmental losses of growth patterns at the continued rate and pattern. Compile

alternative land use and growth pattern strategies and the identify techniques to encourage organized and sustainable growth. Illustrate the impacts and costs (in environmental losses as well as fiscal impacts) of particular growth patterns as experienced in the past twenty years, as well as to project those same impacts and costs if a similar pattern of growth is continued. Develop alternatives and recommendations to encourage smarter and more efficient growth.

Tennessee

01: Johnson City: ''The Land Use and Transportation Plan'' $275,000

Integrate land use planning with transportation planning to increase the performance and efficiency of the transportation system. Adopted formal code changes to land use regulations based on the principles of traditional neighborhood development and transit oriented development. Create opportunities for intensified mixed-use development to occur in neighborhood nodes and permit increased accessibility for pedestrians, bicycles, and transit. Evaluate projected traffic volume and type with and without adoption of the new regulations. The results of the Land Use and Transportation will be able to be used by other communities across the State of Tennessee and nationally.

Texas

14: City of Houston: ''Main Street Corridor Planning and Research Project'' $500,000

Develop a singular, urban vision for the eight-mile Main Street Corridor. Encourage transit and pedestrian-oriented development, improve access to the corridor, explore ground-breaking implementation strategies, and institute innovative evaluation techniques. Build partnerships among public agencies, private and non-profit interests as a vital component of the planning process. Reinforce trends toward inner city revitalization leading to a reduction of automobile dependency and improved air quality in the region.

Utah

07: Greater Wasatch Area: ''Envision Utah'' $425,000

Create a broadly and publicly supported Quality Growth Strategy-a vision to protect Utah's environment, economic strength, and quality of life for our children. Create a replicable process for planning and managing rapid growth and development. Seek community feedback and participation to assist in the development of a publicly supported Quality Growth Strategy and pursuit of actual implementation of this strategy in the Greater Wasatch Area. Develop and draft final Quality Growth Strategy and pursue actual implementation of this strategy in the Greater Wasatch Area. Utilize modeling tools to assist Envision Utah in the cost and impact analysis of the alternative growth scenarios.

Virginia

03: Charlottesville Metropolitan Area: ''Jefferson Area Eastern Planning Initiative'' $517,920

Develop a new model for integrated land use/transportation planning and use it to achieve a regional plan which lays the groundwork for the community's 50-year vision. Build upon planning tools the PDC has developed to improve the multi-modal design of neighborhoods, commercial centers, and transportation corridors. Package as a handbook, CD-Rom, and on the Web to make it easy for other small urban and rural communities to use them.

Washington

02: Central Puget Sound Region: ''Transit Station Communities Project'' $400,000

Use a variety of tools that will contribute to the success of intermodal facilities by working with citizens, neighborhood groups, the business sector, developers, elected officials, and agency personnel to create more livable communities. Organize and initiate both region wide coordination as well as local technical assistance efforts. Coordinate the numerous and disparate station area planning and development activities throughout the region to reach out to local jurisdictions, the development community, and the public to increase the level of awareness and understanding of the opportunities and challenges of intermodal station planning. Provide direct technical assistance and improve community outreach and test a variety of different techniques aimed at advancing local implementation and expanding local community participation.

West Virginia

01: City of Martinsburg: ''Historic Baltimore & Ohio Roundhouse Renovation Project'' $300,000

Develop plans and specifications to renovate/restore the Historic B&O Roundhouse complex. Establish an intermodal operations center to coordinate these services in relation to port commerce, commuter systems, commercial trade, travel and tourism which ties together the highway, rail and air transportation system from within the inland intermodal port area to the historic infrastructure links in a manner which will enhance commerce, cultural/recreational opportunities, and transportation best practices. Develop a Facility Use Plan to chart the course for the complex's development. Provide direction for local officials and the community as they strive to both preserve and effectively transform the existing facility into a key element of the entire transportation, retail trade and community complex. Purchase a trolley bus which will be used as a key short term commuter link with the existing transportation system by providing access to the MARC Train and the Pan Tran Public Transportation System.

Wisconsin

01: Dane County: ''Design Dane Phase II'' $365,000

Provide Dane County communities with the tools necessary to thoroughly evaluate competing land development scenarios. Design a technical geographic model, standards, and process to more efficiently present to decision makers the true costs and benefits of alternative growth patterns. Consider alternatives to simply adding more lanes when making improvements to congested roadways. Coordinate between land use and transportation decision making in communities along roadway corridors. Design and implement transit-oriented development (TOD) projects that may be used as models for future development within our primary transit corridor.

Attachment II: Sample Outline and Format for FY 2000 TCSP Grant Requests:

Cover Sheet With Abstract (1 Page)

I. Project Information

Project Title and Location: _____
Agency: _____
Key Contact: _____
Address: _____
Phone/Fax/E-mail: _____
Amount Requested: $ _____

Abstract

This should be a brief paragraph describing the project and the expected results. Describe the scale of activity such as rural, urban, statewide, etc. and provide information on the types of populations affected by the project (i.e., size of population, commuter, disadvantaged, minority, etc.).

II. Project Description

Narrative: Briefly describe the project, the geographic scale of the proposed activity (system, region, corridor, etc.), its expected results in the short-and longer-term (20–40 years), and the applicant's expectations or vision for the ultimate impact of the activity.

III. Purpose and Criteria

Objectives: Further describe the project and its objectives. Relate how it furthers and integrates each of the following purposes of the TCSP program:

1. Improve the efficiency of the transportation system;
2. Reduce the impacts of transportation on the environment;
3. Reduce the need for costly future investments in public infrastructure;
4. Ensure efficient access to jobs, services, and centers of trade; and
5. Examine development patterns and identify strategies to encourage private sector development patterns which achieve the goals of the TCSP.

IV. Category of Grantee

Grantees should determine if their agency is: (a) Just beginning community preservation practices in their area, or (b) If they have already implemented community preservation practices. Grantees in this later category should provide brief information on established community preservation practices within their community or jurisdiction.

V. Coordination

Indicate how the proposal is consistent with State and metropolitan planning processes and how the appropriate MPO or State Department of Transportation coordination will be demonstrated.

VI. Partners

List, and briefly describe if necessary, the agencies, organizations, and companies participating in the activities or on the project team. Describe the role and functions of the non-traditional partners participating on the project team. Describe plans for involvement or education of the private and public sector.

VII. Schedule

Provide a schedule to complete the major steps or milestones in the project. Include dates of major milestones for project activities, the evaluation and when written reports of the project activities will be submitted.

VIII. Budget and Resources

This section should include a list of all funding, both Federal and non-Federal, and in-kind resources for the project. Priority is given to proposals that demonstrate a commitment of non-Federal resources. Proposals should clearly describe use of in-kind and direct funding contributions and distinguish contributions that are made directly for the proposed projects from those made for other related activities. The budget should include a list of the major costs by category for the project. This could include, for example, personnel costs, travel, services, project evaluation including any contract services, etc. The budget should also show how the TCSP funds and other matching funds are used for these activities. The budget may include the costs for travel for one representative of the project team to participate and present the status and results of the project at two national conferences.

IX. Project Evaluation Plan

The FHWA has prepared guidance on the preparation of evaluation plans for TCSP. This will assist in preparing and summarizing the preliminary plans for evaluation of the activity, including means of monitoring, indicators and measures of performance, and plans for reporting results. Copies of this guidance can be found on the FHWA website (*http://www.fhwa.dot.gov/program.html*) or from the FHWA's Division office in the applicant's State (see Attachment III):

Proposal format for submissions: This example format will assist applicants in preparing your proposal submission. The FHWA does not anticipate that these grant requests will be very lengthy (recommend no more than 15 pages). Any attachments that are included should be directly related to the proposal. Because the FHWA will make copies of the grant proposals for the review process, requests should be in a similar format:

General Format

Page Size: 8½″ x 11″ (including maps and attachments)
12 point font, single sided
Clip the top left corner—no binding or staples
Any colored documents (including maps) should be reproducible in black and white
Include on each page of your submission the project title and page number

Format for Additional Electronic Submission (Optional)

Electronic Format: Include proposal (without attachments) in WordPerfect version 6/7/8 or Word version 97 or earlier on 3½ inch floppy disk labeled with your project title and name.

No watermarks, embedded text, or graphics.

Project submission: Please submit 4 copies and an electronic file of the grant request to the FHWA's Division office in your State. The request should be in the Division office by Thursday, July 15, 1999.

Attachment III—FHWA Division Offices

State	FHWA address, phone no.
Alabama	500 Eastern Boulevard, Suite 200, Montgomery, AL 36117–2018, 334–223–7374.
Alaska	P.O. Box 21648, Juneau, AK 99802–1648, 907–586–7180.
Arizona	234 N. Central Avenue, Suite 330, Phoenix, AZ 85004, 602–379–3916.
Arkansas	Federal Office Building, 700 West Capitol Avenue, Room 3130, Little Rock, AR 72201–3298, 501–324–5625.
California	980 9th Street, Suite 400, Sacramento, CA 95814–2724, 916–498–5015.
Colorado	555 Zang Street, Room 250, Lakewood, CO 80228–1097, 303–969–6730, Ext. 371.
Connecticut	628–2 Hebron Avenue, Suite 303, Glastonbury, CT 06033–5007, 860–659–6703, Ext. 3008.
Delaware	300 South New Street, Room 2101, Dover, DE 19904–6726, 302–734–3819.
District of Columbia	Union Center Plaza, 820 First Street, N.E., Suite 750, Washington, DC 20002 202–523–0163.
Florida	227 North Bronough Street, Room 2015, Tallahassee, FL 32301, 850–942–9586.
Georgia	61 Forsyth St., SW, 17th Floor, Suite 17T100, Atlanta, GA 30303–3104, 404–562–3630.
Hawaii	300 Ala Moana Boulevard, Suite 3202, Box 50206, Honolulu, HI 96850, 808–541–2531.
Idaho	3050 Lakeharbor Lane, Suite 126, Boise 83703, 208–334–9180, Ext. 119.
Illinois	3250 Executive Park Drive, Springfield, IL 62703–4514, 217–492–4641.
Indiana	Federal Office Building, Room 254, 575 North Pennsylvania Street, Indianapolis, IN 46204–1576, 317–226–7475.
Iowa	105 6th Street, P.O. Box 627, Ames, IA 50010–6337, 515–233–7302.
Kansas	3300 South Topeka Blvd., Suite 1, Topeka, KS 66611–2237, 785–267–7281.
Kentucky	John C. Watts Federal Building and U.S. Courthouse , 330 West Broadway Street, P.O. Box 536, Frankfort, KY 40602, 502–223–6723.
Louisiana	Federal Building, Room 255, 750 Florida St., Room 255, P.O. Box 3929, Baton Rouge, LA 70801, 225–389–0245.
Maine	Edmund S. Muskie Federal Building, 40 Western Avenue, Room 614, Augusta, ME 04330, 207–622–8487, Ext. 20.
Maryland	The Rotunda, Suite 220, 711 West 40th Street, Baltimore 21211–2187, 410–962–4342, Ext. 124.
Massachusetts	Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge 02142 617–494–3657.
Michigan	Federal Building, Room 207, 315 West Allegan Street, Lansing, MI 48933, 517–377–1844.
Minnesota	Galtier Plaza, Box 75, 175 East Fifth Street, Suite 500, St. Paul, MN 55101–2904, 651–291–6105.
Mississippi	666 North Street, Suite 105, Jackson 39202–3199, 601–965–4223.
Missouri	209 Adams Street, Jefferson City 65101, 573–636–7104.
Montana	2880 Skyway Drive, Helena, MT 59602, 406–449–5303, Ext. 236.
Nebraska	Federal Building, Room 220, 100 Centennial Mall North, Lincoln, NE 69508–3851, 402–437–5521.
Nevada	705 North Plaza Street, Suite 220, Carson City, NV 89701–0602, 775–687–5321.
New Hampshire	279 Pleasant Street, Room 204, Concord, NH 03301–2509, 603–225–1606.
New Jersey	840 Bear Tavern Road, Suite 310, West Trenton, NJ 08628–1019, 609–637–4200.
New Mexico	604 W. San Mateo Road, Santa Fe, NM 87505, 505–820–2022.

State	FHWA address, phone no.
New York	Leo W. O'Brien Federal Building, Clinton & N. Pearl Ss., 9th Floor, Albany, NY 12207, 518–431–4131.
North Carolina	310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919–856–4347.
North Dakota	1471 Interstate Loop, Bismarck, ND 58501–0567, 701–250–4347.
Ohio	200 North High Street, Room 328, Columbus, OH 43215, 614–280–6896.
Oklahoma	300 N. Meridian, Suite 105 S, Oklahoma City, OK 73107–6560. 405–605–6174.
Oregon	The Equitable Center, Suite 100, 530 Center St., N.E., Salem, OR 97301, 503–399–5749.
Pennsylvania	228 Walnut Street, Room 558, Harrisburg 17101–1720, 717–221–4585.
Puerto Rico	Federico Degetau Federal Building and U.S. Courthouse, Carlos Chardon St., Rm 329, San Juan, PR 00918–1755, 787–766–5600, Ext. 230.
Rhode Island	380 Westminster Mall, Fifth Floor, Providence, RI 02903, 401–528–4560.
South Carolina	Strom Thurmond Federal Building, 1835 Assembly Street, Suite 758, Columbia, SC 29201, 803–765–5282.
South Dakota	The Sibley Building, 116 East Dakota Avenue, Pierre, SD 57501–3110, 605–224–7326, Ext. 3043.
Tennessee	249 Cumberland Bend Drive, Nashville, TN 37228, 615–736–5394.
Texas	Federal Office Building, Room 826, 300 East Eighth Street, Austin , TX 78701, 512–916–5511.
Utah	2520 W. 4700 South, Suite 9A, Salt Lake City, UT 84118, 801–963–0182.
Vermont	Federal Building, 87 State St., P.O. Box 568, Montpelier 05601, 802–828–4433.
Virginia	The Dale Building, Suite 205, 1504 Santa Rosa Road, Richmond 23229, 804–281–5103.
Washington	Suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, WA 98501, 360–753–9554.
West Virginia	Geary Plaza, Suite 200, 700 Washington Street. E, Charleston, WV 25301–1604, 304–347–5929.
Wisconsin	Highpoint Office Park, 567 D'Onofrio Drive, Madison, WI 53719–2814, 608–829–7506.
Wyoming	1916 Evans Avenue, Cheyenne, WY 82001–3764, 307–772–2004, Ext. 41.
FHWA/FTA Metropolitan Offices	
New York	6 World Trade Center, Room 320, New York, NY 10048, FAX: 212–466–1939, 212–668–2201. 26 Federal Plaza, Suite 2940, New York, NY 10278–0194, FAX 212–264–8973, 212–668–2170.
Philadelphia	1760 Market St., Suite 510, Philadelphia, Pa 19103, 215–656–7070, FAX: 215–656–7260, 215–656–7111.
Chicago	200 West Adams, Room 2410, Chicago, IL 60606, 312–886–1616, FAX: 312–886–0351 312–886–1604.
Los Angeles	201 N. Figueroa Street, Suite 1460, Los Angeles, CA 90012; 213–202–3950; FAX: 213–202–3961.

Authority: 23 U.S.C. 315; sec. 1221, Pub.L. 105–178, 112 Stat. 107, 221 (1998); 49 CFR 1.48.

Issued on: May 3, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–11586 Filed 05–07–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Reconsideration of Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations Sections 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for reconsideration of a waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved and the nature of the relief being requested.

National Railroad Passenger Corporation (Waiver Petition Docket Number H–96–1)

The Federal Railroad Administration has received a request from the National Railroad Passenger Corporation (Amtrak) to modify conditions set forth in the conditionally approved Petition for Waiver of Compliance, H–96–1. That waiver is for the development, testing, installation, and demonstration of a communication-based train control system in Amtrak's Detroit to Chicago Corridor.

Amtrak requests that Condition No. 1, of H–96–1, ''Waiver is not for revenue service,'' be changed to include daily revenue service trains, with newly defined conditions.

The waiver granted permission to operate a test train at speeds exceeding 79 MPH, but not to exceed 110 MPH, with the following conditions:

1. Waiver is not for revenue service.

2. Compliance with Test Plan 081776–070 REV. A04.

3. Waiver is granted until July 1, 1997.

4. FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of rail operations or in the event of noncompliance with the conditions of this approval.

(Condition 3 has since been modified twice, with the waiver currently granted until December of 1999.)

A test train was operated successfully at speeds up to 100 MPH in the fall of 1996. Much was accomplished in these tests, much data was collected, and the supplier of this system, Harmon Industries, is currently deeply involved in the integration of the system. This integration involves an exhaustive investigation of all possible failure modes of the train control system in order to be able to certify the fail-safety of the system when the final release to Amtrak is made for in-service testing for revenue service.

It has become apparent the vendor will not be able to fully complete the validation and verification of the wayside and location processor subsystems until mid-year 2000, and the host (on-board) processor subsystem until the end of the third quarter of year 2001.

The partners in this project believe that an important part of the development of this project, that must not be delayed, is the next step in

testing to determine the reliability of the system in regular revenue service.

In view of the significant delays encountered in developing the full validation and verification, Amtrak now would like to commence testing the system in revenue service. They propose that the system actually be placed in daily service for a significant ''burn-in'' period with close monitoring to develop the availability/reliability of the system. This would be done in parallel with the ongoing validation and verification effort, and would be done in such a way that it would not have an adverse impact on the revenue service trains. Initially, revenue service trains would be ITCS equipped and operated through the ITCS test territory with the P2A valve cut out and no ITCS operating rules in effect, at speeds not to exceed 79 MPH. After this first 90 day period the P2A valve would be cut in and ITCS operating rules would be in effect, with maximum speed being 79 MPH for an additional 90 days. Further, Amtrak requests that the limits of the test bed for the purpose of this waiver, be extended as wayside equipment is cut-over, eastward from Signal 175 to Signal 150 west of Oshtemo, Michigan, and westward from Signal 195 to Signal 216, west of Three Oaks, Michigan.

Amtrak's proposed timetables are:

ITCS Cutover, P2A valve cut out
- Estimated Duration—90 days
- Maximum Passenger Speed—79 MPH
- Location—Signal 175 (M.P.175.2) to Signal 195 (M.P. 195.55)
- ITCS Operating Rules not in effect
- Commence—April 1999

P2A valve cut-in
- Estimated Duration—90 days
- Maximum Passenger Speed—79 MPH
- Location—Signal 175 (M.P.175.2) to Signal 195 (M.P. 195.55)
- ITCS Operating Rules in effect
- Commence—July 1999

ITCS data from the following sources will be evaluated via remote modem technology from Harmon's Grain Valley technical facility:
- Departure Test Devices
- Wayside Interface Units and Wayside Interface Unit-Servers
- Locomotive and Non-Powered Control Units On-board Computer
- Home and Intermediate Signals
- Grade Crossings

Revenue Service, Limited
- Estimated Duration—300 days
- Maximum Passenger Speed—90 MPH
- Location—Signal 150 to Signal 216
- ITCS Operating Rules in effect
- Commence—October 1999

FRA feels that Amtrak can continue, under H–96–1 existing conditions, with ITCS Cutover, P2A Cut-Out. This is a 90 day period allowing for wayside equipment cutover, and on-board data gathering within the 20 mile test bed and at speeds not to exceed 79 MPH, with no ITCS rules in effect, and the P2A valve not cut-in to the ITCS. This period is to commence in April 1999.

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 this proceedings should identify by the docket number (1) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 30 days 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 (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–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*.

Issued in Washington, DC on May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11624 Filed 5–7–99; 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–1999–4990.

Applicant: Colorado and Kansas Railroad Company, Mr. John A. Stiehl, Authorized Agent for Board of Directors, P.O. Box 128, Louisville, Colorado 80027.

Colorado and Kansas Railroad Company seeks approval of the proposed temporary discontinuance of the automatic block signal system, on the main track and siding, between NA Junction, milepost 869.40 and Towner, milepost 747.50, Colorado, on the Hoisington Subdivision, with restoration by January 1, 2001.

The reason given for the proposed changes is to enable the Colorado and Kansas Railroad Company start-up operation to begin in advance of completion of costly signal repairs.

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 May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11623 Filed 5–7–99; 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–1999–4992

Applicants:

Consolidated Rail Corporation,
Mr. J. F. Noffsinger,
Chief Engineer—C&S Assets,
2001 Market Street, P.O. Box 41410,
Philadelphia, Pennsylvania 19101–1410

CSX Transportation, Incorporated,
Mr. R. M. Kadlick,
Chief Engineer Train Control,
500 Water Street (S/C J–350),
Jacksonville, Florida 32202

Consolidated Rail Corporation (Conrail) and CSX Transportation, Incorporated (CSXT) jointly seek approval of the proposed discontinuance and removal of the traffic control system, on the single main track Lurgan Branch, between ''CP Ship'' Interlocking, milepost 40.2 and CP Lurgan,'' milepost 42.4, near Lurgan, Pennsylvania, on the Conrail's Philadelphia Division. The proposed changes include the discontinuance and removal of ''CP Lurgan'' and intermediate signal P413; conversion of signal P412 to an inoperative approach signal; and extension of the manual block from CSXT to ''CP Ship.''

The reason given for the proposed change is to retire facilities no longer required for present 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 (9:00 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 May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11621 Filed 5–7–99; 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–1999–4991.

Applicant: Maine Coast Railroad Corporation, Ms. Sharon S. White, President, P.O. Box 614, Wiscasset, Maine 04578.

Maine Coast Railroad Corporation seeks approval of the proposed temporary discontinuance of the Bath Interlocking, Carlton Drawbridge, on the single main track, at Bath, Maine, on the Rockland Branch, associated with the rehabilitation of the damaged interlocking. Once the shipment of necessary parts and materials for the redesigned interlocking arrive, work will begin, with an expected April 1999 completion.

The reason given for the proposed changes is that the drawbridge interlocking was severely damaged on or around August 31, 1998, and was removed from service. Maine Coast Railroad Corporation now believes that the removal of the interlocking from service will exceed the six month period described in 49 CFR 235.7(a)(4), pending rehabilitation of the interlocking.

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 May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11622 Filed 5–7–99; 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–1999–5023

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 temporary discontinuance of the signal system, on the No. 2 Main track, between mileposts 32.9 and 33.2, on the Martinez Subdivision, near Martinez, California, during construction of a new CTC signal system on the No. 2 Main and adjacent tracks, for approximately four months.

The reason given for the proposed changes is to make room for and allow construction of a new CTC signal system on the No. 2 Main track and adjacent tracks.

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 May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11620 Filed 5–7–99; 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–1999–5187.

Applicant: Wisconsin Central Limited, Mr. Glenn J. Kerbs, Vice President Engineering, P.O. Box 5062, Rosemont, Illinois 60017–5062.

Wisconsin Central Limited seeks approval of the proposed discontinuance and removal of existing Stevens Point East interlocking, milepost CM246.98, at Stevens Point, Wisconsin, consisting of the removal of all existing interlocked signals, and conversion of the two power-operated switches to hand operation.

The reasons given for the proposed changes are track changes associated with the proposed siding extension, and installation of a new power-operated switch at milepost CM244.3.

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 May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11619 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–06–P

federal register

Monday
May 10, 1999

Part II

Department of Defense

Department of the Army, Corps of Engineers

Environmental Protection Agency

33 CFR Part 323

40 CFR Part 232

Revisions to the Clean Water Act Regulatory Definition of ''Discharge of Dredged Material''; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 323

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 232

[FRL–6338–9]

Revisions to the Clean Water Act Regulatory Definition of ''Discharge of Dredged Material''

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are promulgating a final rule amending a Clean Water Act (CWA) section 404 regulation that defines the term ''discharge of dredged material.'' This action conforms that definition to the results of a lawsuit holding that by asserting jurisdiction over any redeposit of dredged material, including incidental fallback, the Agencies had exceeded our statutory authority under the CWA. Today's action is intended to comply with the injunction issued by the district court in that case. Today's rule responds to the court decision by deleting language from the regulation that was held to exceed our CWA statutory authority and by adding clarifying language.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: For information on the final rule, contact Mr. John Lishman of EPA at (202) 260–9180 or Mr. Mike Smith or Mr. Sam Collinson of the Corps at (202) 761–0199. For questions on project-specific activities, contact your local Corps District office. Addresses and telephone numbers for Corps District offices can be obtained from the Corps Regulatory Homepage at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/district.htm. If you do not have access to the Internet, telephone numbers for Corps District offices can be obtained by calling the National Wetlands hotline at 800–832–7828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Potentially Affected Entities

Persons or entities engaged in discharging dredged material to waters of the US could be affected by today's rule. Today's rule addresses the regulatory definition of ''discharge of dredged material,'' a term which is important in determining what types of activities do or do not require a CWA section 404 permit. As described further below, today's action does not increase regulatory burdens, but rather conforms the language in our section 404 regulations to the outcome of a lawsuit challenging the regulatory definition. Examples of entities that might potentially be affected include:

Category	Examples of potentially affected entities
State/Tribal governments or instrumentalities	State/tribal agencies or instrumentalities that discharge dredged material to waters of the U.S.
Local governments or instrumentalities	Local governments or instrumentalities that discharge dredged material to waters of the U.S.
Industrial, commercial, or agricultural entities	Industrial, commercial, or agricultural entities that discharge dredged material to waters of the U.S.
Land developers and landowners	Land developers and landowners that discharge dredged material to waters of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to carry out activities affected by this action. This table lists the types of entities that the Agencies are now aware of that carry out activities potentially affected by this action. Other types of entities not listed in the table could also perform activities that are affected. To determine whether your organization or its activities are affected by this action, you should carefully examine the preamble discussion in section II of today's final rule. If you still have questions regarding the applicability of this action to a particular activity, consult the Corps District offices as listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Tulloch Rule and Related Litigation

Section 404 of the Act authorizes the Corps (or a State with an authorized permitting program) to issue permits for the discharge of dredged or fill material into waters of the United States. On August 25, 1993 (58 FR 45008), we issued a regulation (the ''Tulloch rule'') defining the term ''discharge of dredged material'' as:

> Any addition of dredged material into, including any redeposit within, the waters of the United States. The term includes, but is not limited to the following: * * * any addition, including any redeposit, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.

33 CFR 323.2(d)(1); 40 CFR 232.2.

The American Mining Congress and several other trade associations challenged this regulation. On January 23, 1997, the U.S. District Court for the District of Columbia ruled that the regulation exceeded our authority under the CWA because it impermissibly regulated ''incidental fallback'' of dredged material.[1] The court concluded that incidental fallback is not subject to the CWA as an ''addition'' of pollutants, and declared the rule ''invalid and set aside.'' The Court also enjoined us from applying or enforcing the regulation. The government appealed the court's ruling and, on June 19, 1998, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court's decision.[2] *American Mining Congress* v. *United States Army Corps of Engineers*, 951 F.Supp. 267 (D.D.C. 1997); *aff'd sub nom, National Mining Association* v. *United States Army Corps of Engineers*, 145 F.3d 1339 (D.C. Cir. 1998) (''*NMA*'').

II. Today's Rule

Today's rule modifies our definition of ''discharge of dredged material'' in order to respond to the Court of Appeals' holding in *NMA*, and is intended to comply with the district court's injunction. The D.C. Circuit

[1] Incidental fallback results in the return of dredged material virtually to the spot from which it came. *See, NMA*, 145 F.3d at 1403.

[2] The *NMA* decision did not address the definition of ''discharge of fill material'' (33 CFR 323.2(f); 40 CFR 232.2), and thus did not affect the regulation of discharges of fill material, nor are the Agencies altering that definition in today's rulemaking.

found that the Tulloch rule changed the prior regulatory regime by regulating incidental fallback for the first time. 145 F.3d at 1402. The court found that the rule accomplished this result by defining ''discharge'' to include ''any redeposit'' of dredged material. *See,* 145 F.3d at 1403 (''It is undisputed that by requiring a permit for '*any* redeposit' the Tulloch rule covers incidental fallback'') (emphasis in original) (citation omitted). The court concluded that incidental fallback is not an ''addition'' of a pollutant, and that, therefore, our assertion of authority to regulate *any* redeposit of dredged material exceeded our statutory authority. 145 F.3d at 1405 (''We hold only that by asserting jurisdiction over '*any* redeposit,' including incidental fallback, the Tulloch rule outruns the Corps's statutory authority'') (emphasis in original). To conform our regulation to this holding we have made two modifications to the rule. First, today's rule deletes use of the word ''any'' as a modifier of the term ''redeposit.'' Second, today's rule expressly excludes ''incidental fallback'' from the definition of ''discharge of dredged material.''

Today's rule does not alter the well-settled doctrine, recognized in *NMA,* that some redeposits of dredged material in waters of the United States constitute a discharge of dredged material and therefore require a section 404 permit. *See* 145 F.3d at 1405 (''But we do not hold that the Corps may not legally regulate some forms of redeposit under its section 404 permitting authority.''); 145 F.3d at 1405, n.6 (recognizing that ''a redeposit could be an addition to [a] new location and thus a discharge'').

Deciding when a particular redeposit is subject to CWA jurisdiction will require a case-by-case evaluation, based on the particular facts of each case. Judicial decisions have established, and the D.C. Circuit recognized in *NMA,* that redeposits associated with the following are subject to CWA jurisdiction: mechanized landclearing, redeposits at various distances from the point of removal (e.g., sidecasting), and removal of dirt and gravel from a streambed and its subsequent redeposit in the waterway after segregation of minerals. 145 F.3d at 1407. *See also, Avoyelles Sportsmen's League* v. *Marsh,* 715 F.2d 897 (5th Cir. 1983) (mechanized landclearing requires section 404 permit); *United States* v. *M.C.C. of Florida,* 772 F.2d 1501 (11th Cir. 1985), *vacated on other grounds,* 481 U.S. 1034 (1987), *readopted in relevant part on remand,* 848 F.2d 1133 (11th Cir. 1988) (redeposit of river bottom sediments on adjacent sea grass beds is an ''addition''); *Rybachek* v. *EPA,* 904 F.2d 1276 (9th Cir. 1990) (resuspension of materials by placer miners as part of gold extraction operations is an ''addition of a pollutant'' under the CWA subject to EPA's regulatory authority); *NMA,* 951 F.Supp. at 270 (''Sidecasting, which involves placing removed soil alongside a ditch, and sloppy disposal practices involving significant discharges into waters, have always been subject to section 404'').

Determining whether a particular redeposit constitutes incidental fallback and, under the court's decision is not subject to section 404, will also require evaluation on a case-by-case basis. The *NMA* decision indicates incidental fallback ''* * * returns dredged material virtually to the spot from which it came.'' 145 F.3d at 1403. It also describes incidental fallback as occurring ''when redeposit takes place in substantially the same spot as the initial removal.'' 145 F.3d at 1401. Similarly, the district court described incidental fallback as ''the incidental soil movement from excavation, such as the soil that is disturbed when dirt is shoveled, or the back-spill that comes off a bucket and falls back into the same place from which it was removed.'' 951 F.Supp. at 270.

The court in *NMA* recognized that the CWA ''sets out no bright line between incidental fallback on the one hand and regulable redeposits on the other'' and that ''a reasoned attempt to draw such a line would merit considerable deference.'' 145 F.3d at 1405. We have not attempted to draw such a line here. Nor have we evaluated (as we did when promulgating the Tulloch rule) the complex legal, factual and policy questions associated with interpreting the reach of the CWA. Rather, we have promulgated today's rule to comply with the injunction issued in *NMA,* and as described below, will expeditiously undertake notice and comment rulemaking that will make a reasoned attempt to more clearly delineate the scope of CWA jurisdiction over redeposits of dredged material in waters of the U.S. In the interim, we will determine on a case-by-case basis whether a particular redeposit of dredged material in waters of the United States requires a section 404 permit, consistent with our CWA authorities and governing case law. Entities that are engaging, or intend to engage, in activities in waters of the U.S. that may result in a ''discharge of dredged material'' as that term is defined in today's final rule are hereby given notice that the agencies intend to regulate those activities that we find, based on the particular circumstances, would result in an addition of pollutants to waters of the U.S.

III. Future Notice and Comment Rulemaking

As explained in the preamble language accompanying the issuance of theTulloch rule (57 FR 26894 (June 16, 1992); 58 FR 45008 (August 25, 1993)), some small volume discharges associated with mechanized landclearing, ditching, channelization, or other excavation activities were not consistently subject to environmental review under the pre-Tulloch regulations even though waters of the U.S., including wetlands, were destroyed or degraded. By using specialized dredging and disposal techniques some developers sought to use a loophole in those regulations to convert wetlands without the need to obtain a CWA section 404 permit. The section 404 environmental review process is not aimed at preventing development, but instead is designed to avoid unacceptable adverse environmental impacts, and to the extent adverse impacts cannot be avoided, assure they are appropriately minimized or mitigated.

The Agencies are particularly concerned that, without further action to clarify the definition of ''discharge of dredged material,'' large-scale destruction of wetlands could occur, resulting in increased flooding or runoff and harm to neighboring property, pollution of streams and rivers, and loss of valuable habitat. Moreover, available information indicates that such losses are already occurring. Accordingly, the Agencies will expeditiously undertake additional notice and comment rulemaking in furtherance of the CWA's objective to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' Additionally, the *NMA* court recognized that the CWA ''sets out no bright line between incidental fallback on the one hand and regulable redeposits on the other'' and that ''a reasoned attempt to draw such a line would merit considerable deference.'' (145 F.3d at 1405). Further rulemaking thus is appropriate not only to ensure that the Nation's wetlands and other waters of the U.S. will continue to receive the protection required by section 404 of the CWA, but also to enhance clarity, certainty, and consistency in determining what activities are subject to section 404 in light of the *NMA* decision.

IV. Related Statutes and Executive Orders

A. Findings Under 5 U.S.C. 553

Under the Administrative Procedure Act (APA), 5 U.S.C. 553, agencies are required to publish a notice of proposed rulemaking and provide an opportunity for the public to comment on any substantive rulemaking action. Notice and comment is not required, however,

> when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

5 U.S.C. 553(b)(3)(B).

Today's rule merely conforms the language in our section 404 regulations to the current status of those regulations after the *NMA* case. The district court judgment, as affirmed by the D.C. Circuit, invalidated application of our regulation to incidental fallback and enjoined us from applying or enforcing the rule. By expressly excluding incidental fallback from the definition of ''discharge of dredged material,'' today's revisions conform the regulations to reflect the legal status quo in light of the *NMA* decision. Therefore, we find that solicitation of public comment is unnecessary.

Under 5 U.S.C. 553(d)(1) and (3), rules must be published at least 30 days prior to their effective date, except where the rule ''grants or recognizes an exemption or relieves a restriction,'' or where justified by the agency for ''good cause.'' Today's rule, in accordance with the *NMA* decision, removes the requirement for a section 404 permit for incidental fallback in waters of the U.S. Accordingly, today's rule is effective immediately.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget (OMB). The current OMB approval number for information requirements related to the CWA section 404 program is 0710–0003 (expires June 30, 2000). Today's rule merely conforms the definition of ''discharge of dredged material'' to reflect the ruling in the *NMA* case. It does not establish or modify any information reporting, or record-keeping requirements, and therefore is not subject to the requirements of the Paperwork Reduction Act.

C. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

D. Other Statutes and Executive Orders

Today's rule does not establish any new requirements, mandates or procedures. As explained above, today's rule merely conforms the regulations' definition of ''discharge of dredged material'' to reflect the judicial decision in the *NMA* case. Because today's rule is a ''housekeeping'' measure undertaken to conform the regulatory language to that judicial determination, it does not result in any additional or new regulatory requirements. In fact, the judicial determination which it reflects has the practical effect of removing incidental fallback from coverage under the regulations. Accordingly, it has been determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the APA or any other statute, and because it does not impose any requirements on small entities, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, we have made such a good cause finding, including the reasons therefore, and established an effective date of May 10, 1999. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

33 CFR Part 323

Navigation, Water Pollution Control, Waterways

40 CFR Part 232

Environmental protection, Wetlands, Water Pollution Control.

Dated: April 27, 1999.

Carol D. Browner,

Administrator, Environmental Protection Agency.

Dated: April 30, 1999.

Joseph W. Westphal,

Assistant Secretary of the Army (Civil Works), Department of the Army.

In consideration of the foregoing, 33 CFR Part 323 and 40 CFR Part 232 are amended as set forth below:

33 CFR CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 323—[AMENDED]

1. The authority citation for Part 323 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend section 323.2(d) as follows:

a. In the first sentence of paragraph (d)(1), remove the words ''any redeposit of dredged material'' and add, in their place, the words ''redeposit of dredged material other than incidental fallback''.

b. In paragraph (d)(1)(iii), remove the words ''any redeposit,'' and add, in their place, the words ''redeposit other than incidental fallback,''.

c. In paragraph (d)(2), add at the end thereof a new paragraph (d)(2)(iii) to read as follows:

§ 232.2 Definitions.

* * * * *

(d) * * *

(2) * * *

(iii) Incidental fallback.

* * * * *

40 CFR CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 232—[AMENDED]

3. The authority citation for Part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

4. In § 232.2 the definition of ''discharge of dredged material'' is amended as follows:

a. In the first sentence of paragraph (1), remove the words ''any redeposit of dredged material'' and add, in their place, the words ''redeposit of dredged material other than incidental fallback''.

b. In paragraph (1)(iii), remove the words ''any redeposit,'' and add, in their place, the words ''redeposit other than incidental fallback,''.

c. In paragraph (2), add at the end thereof a new paragraph (2)(iii) to read as follows:

§ 232.2 Definitions.

* * * * *

Discharge of dredged material * * *

(2) * * *

(iii) Incidental fallback.

* * * * *

[FR Doc. 99–11680 Filed 5–5–99; 3:41 pm]

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Monday
May 10, 1999

Part III

Environmental Protection Agency

40 CFR Part 9 and Chapter VII

Department of Defense

40 CFR Chapter VII

Uniform National Discharge Standards for Vessels of the Armed Forces; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9 and Chapter VII

DEPARTMENT OF DEFENSE

40 CFR Chapter VII

[FRL–6335–5]

RIN 2040–AC96

Uniform National Discharge Standards for Vessels of the Armed Forces

AGENCY: Environmental Protection Agency (EPA) and Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: This rule applies to discharges incidental to the normal operation of Armed Forces vessels and determines which of these discharges the Armed Forces will be required to control by using a marine pollution control device (MPCD), and which discharges will not require controls.

Today's rule also establishes the mechanism by which States can petition EPA and DOD to review whether or not a discharge should require control by a MPCD or to review a Federal performance standard for a MPCD; and the processes EPA and States must follow to establish no-discharge zones (where any release of a specified discharge is prohibited).

This rule completes the first phase of a three-phase process to set uniform national discharge standards (UNDS) for Armed Forces vessels. This Phase I rule determines the types of vessel discharges that require control by MPCDs and which do not, based on consideration of the anticipated environmental effects of the discharge and other factors listed in the Clean Water Act. Future rulemakings will promulgate the MPCD performance standards for those types of discharges requiring MPCDs (Phase II), and specify the requirements for the design, construction, installation, and use of MPCDs (Phase III).

Uniform national discharge standards will result in enhanced environmental protection because standards will be established for certain discharges that currently are not regulated comprehensively. These standards will also advance the ability of the Armed Forces to better design and build environmentally sound vessels, to train crews to operate vessels in a manner that is protective of the environment, and to maintain operational flexibility both domestically and internationally. In addition, these standards are expected to stimulate the development of innovative vessel pollution control technology.

DATES: The regulation shall become effective June 9, 1999.

ADDRESSES: The complete public record for this rulemaking, including responses to comments received during the rulemaking, can be found under docket number W–97–21. The record is available for review at the Office of Water Docket, Room EB–57, 401 M Street SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Stapleton (U.S. EPA) at (202) 260–0141, or Mr. David Kopack (U.S. Navy) at (703) 602–3594 ext. 243.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This rule applies to discharges incidental to the normal operation of Armed Forces vessels in State waters and the contiguous zone, establishes procedures by which States can petition EPA and DOD to review whether a discharge should be controlled or to review a performance standard, and establishes procedures for creating no-discharge zones in State waters. Regulated categories and entities include:

Category	Examples of regulated entities
Federal Government.	Vessels of the Armed Forces, including the Navy, Military Sealift Command, Marine Corps, Army, Air Force, and Coast Guard.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA and DOD are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether a particular category of vessel, discharge from a vessel, or governmental entity is regulated by this action, carefully examine the applicability criteria at 40 CFR 1700.1 in the regulatory text following this preamble. For answers to questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Exclusions

This rule does not apply to commercial vessels; private vessels; vessels owned or operated by State, local, or tribal governments; vessels under the jurisdiction of the Army Corps of Engineers; vessels, other than those of the Coast Guard, under the jurisdiction of the Department of Transportation or other federal agencies; vessels preserved as memorials and museums; time- and voyage-chartered vessels; vessels under construction; vessels in drydock; and amphibious vehicles.

Supporting Documentation

The technical basis for this rule is detailed in the ''Technical Development Document for Phase I Uniform National Discharge Standards for Vessels of the Armed Forces'' (EPA–821–R–99–001), hereafter referred to as the Technical Development Document. This background document is available through EPA's Internet Home Page at http://www.epa.gov/OST/guide, or through the UNDS Internet Home Page at http://206.5.146.100/n45/doc/unds/unds.html. This document is also available from the National Service Center for Environmental Publications, 11029 Kenwood Road, Cincinnati, OH 45242; telephone: 1–800–490–9198; Internet: http://www.epa.gov/ncepi.

Overview

This preamble describes the legal authority, background, technical basis, and other aspects of the final regulation. The definitions, acronyms, and abbreviations used in this notice are defined in Appendix A to the preamble. The regulatory text for this rule (40 CFR Part 1700) follows the preamble.

Organization of This Document

I. Summary of This Rulemaking
  A. Pollution Control Requirements for Vessel Discharges
  B. Effect on State and Local Laws and Regulations
II. Legal Authority and Background
  A. Clean Water Act Statutory Requirements
  B. Summary of Public Outreach and Consultation With States, Tribes, and Federal Agencies
III. Description of Armed Forces Vessels
IV. Developments Since Proposal
  A. Peer Review
  B. Public Comments
V. Related Acts of Congress and Executive Orders
  A. Executive Order 12866
  B. Unfunded Mandates Reform Act
  C. Executive Order 12875: Enhancing the Intergovernmental Partnership
  D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act
  F. Paperwork Reduction Act
  G. Executive Order 13045
  H. Endangered Species Act

I. National Technology Transfer and Advancement Act
J. Congressional Review Act
Appendix to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

I. Summary of This Rulemaking

A. Pollution Control Requirements for Vessel Discharges

Today's rule creates a new 40 CFR part 1700 establishing uniform national discharge standards that apply to discharges, other than sewage, incidental to the normal operation of vessels of the Armed Forces. Incidental discharges include effluent from the normal operation of vessel systems or hull protective coatings, but do not include such things as emergency discharges, air emissions, or discharges of trash. These regulations apply to 39 types of vessel discharges and determine which of those discharges require control through the use of marine pollution control devices (MPCDs). A MPCD is any equipment or management practice installed or used onboard a vessel to control a discharge. Today's rule also identifies discharges that are excluded from any requirement for a MPCD because of their low potential for causing adverse impacts on the marine environment. The preamble for the proposed rule and the Technical Development Document describe these discharges in detail. See 63 FR at 45309–45325 (August 25, 1998).

In today's rule, EPA and DOD are requiring the 25 discharges listed in Table 1 to be controlled by MPCDs. These discharges are defined at 40 CFR 1700.4 in the regulatory text following the preamble, and are described in detail in the preamble for the proposed rule (63 FR at 45309–45318). The preamble for the proposed rule and the Technical Development Document also discuss whether and to what extent the discharges have the potential to cause adverse impacts on the marine environment, the availability of MPCDs to mitigate adverse impacts, and the rationale for requiring the use of MPCDs.

TABLE 1.—DISCHARGES REQUIRING MARINE POLLUTION CONTROL DEVICES

Aqueous Film-Forming Foam.
Catapult Water Brake Tank and Post-Launch Retraction Exhaust.
Chain Locker Effluent.
Clean Ballast.
Compensated Fuel Ballast.
Controllable Pitch Propeller Hydraulic Fluid.
Deck Runoff.
Dirty Ballast.
Distillation and Reverse Osmosis Brine.
Elevator Pit Effluent.
Firemain Systems.
Gas Turbine Water Wash.
Graywater.
Hull Coating Leachate.
Motor Gasoline Compensating Discharge.
Non-Oily Machinery Wastewater.
Photographic Laboratory Drains.
Seawater Cooling Overboard Discharge.
Seawater Piping Biofouling Prevention.
Small Boat Engine Wet Exhaust.
Sonar Dome Discharge.
Submarine Bilgewater.
Surface Vessel Bilgewater/Oil-Water Separator Discharge.
Underwater Ship Husbandry.
Welldeck Discharges.

This rule imposes no controls on the 14 types of discharges listed in Table 2. These 14 discharges are defined at 40 CFR 1700.5 in the regulatory text following this preamble. Based on the information in the record, these discharges exhibit a low potential for causing adverse impacts on the marine environment. Therefore, EPA and DOD have determined that it is not reasonable and practicable to require the use of MPCDs to mitigate adverse impacts on the marine environment. The preamble for the proposed rule (63 FR at 45318–45325) and the Technical Development Document describe each of these discharges and the reasons why MPCDs are not required.

TABLE 2.—DISCHARGES EXEMPTED FROM CONTROLS

Boiler Blowdown.
Catapult Wet Accumulator Discharge.
Cathodic Protection.
Freshwater Lay-up.
Mine Countermeasures Equipment Lubrication.
Portable Damage Control Drain Pump Discharge.
Portable Damage Control Drain Pump Wet Exhaust.
Refrigeration/Air Conditioning Condensate.
Rudder Bearing Lubrication.
Steam Condensate.
Stern Tube Seals and Underwater Bearing Lubrication.
Submarine Acoustic Countermeasures Launcher Discharge.

TABLE 2.—DISCHARGES EXEMPTED FROM CONTROLS—Continued

Submarine Emergency Diesel Engine Wet Exhaust.
Submarine Outboard Equipment Grease and External Hydraulics.

In developing this rule, EPA and DOD considered the seven factors listed at CWA 312(n)(2)(B) to determine whether a discharge requires control by a MPCD:

- The nature of the discharge;
- The environmental effects of the discharge;
- The practicability of using the MPCD;
- The effect that installing or using the MPCD would have on the operation or the operational capability of the vessel;
- Applicable U.S. law;
- Applicable international standards; and
- The economic costs of installing and using the MPCD.

In making the determinations, EPA and DOD assessed each discharge for its potential to cause adverse impacts on the marine environment due to the chemical constituents present in the discharge (including bioaccumulative chemicals of concern), thermal pollution, or by introducing nonindigenous aquatic species. EPA and DOD conducted an extensive data gathering effort to characterize the nature of these discharges. This effort included surveys and consultations involving DOD and Coast Guard personnel with expertise in vessel operations and shipboard systems or equipment generating the discharges. The survey and consultation results were supplemented with sampling, where necessary. Details of these efforts are summarized in the preamble to the proposed rule and in the Technical Development Document. See 63 FR at 45305–45306.

A detailed description of the assessment methodology is presented in the preamble for the proposed rule (63 FR at 45306–45307) and the Technical Development Document. The preamble for the proposed rule and the Technical Development Document also describe the results of the assessment and conclusions about the potential for each discharge to cause adverse impacts on the marine environment.

For each discharge that was determined to have the potential to adversely impact the marine environment, EPA and DOD conducted an initial evaluation of the practicability, operational impact, and economic cost of using a MPCD to control each discharge. The results of the MPCD assessments are presented in the Technical Development Document.

EPA and DOD first determined whether a control technology or management practice is currently in place to control the discharge for environmental protection on any vessel type. The use of existing controls on a vessel was considered sufficient demonstration that at least one reasonable and practicable control is available for at least one vessel type.

For discharges without any existing pollution controls, EPA and DOD analyzed potential pollution control options to determine whether it is reasonable and practicable to require the use of MPCDs. For every discharge that was found to have a potential to cause adverse environmental effects, EPA and DOD identified at least one potential MPCD option that could mitigate the environmental impacts of the discharge from at least one class of Armed Forces vessel. Because of this, EPA and DOD determined for these discharges that it is reasonable and practicable to require a MPCD for at least one vessel type.

This Phase I UNDS rule does not address whether existing control technologies or management practices are adequate to mitigate potential adverse impacts. Because of the diversity of vessel types and designs, these controls are usually not uniformly applied to all vessels generating the discharge. In addition, these existing controls do not necessarily represent the only control options available. In a future rulemaking (UNDS Phase II), EPA and DOD will perform a more detailed assessment of the MPCD control options available for each class of vessels and develop MPCD performance standards for the discharges requiring control. The Phase II rule may distinguish among vessel types and sizes, between new and existing vessels, and may determine that MPCD standards are not necessary or appropriate for a particular type or age of vessel. See CWA section 312(n)(3)(B) and (C).

Under Executive Order 13089 (63 FR 32701, June 16, 1998), all Federal agencies whose actions may affect U.S. coral reef ecosystems shall identify these actions, and use their programs and authorities to protect and enhance the conditions of such ecosystems. This Phase I rule is only a preliminary step that simply identifies the discharges that will require control and the discharges that will not require control. This rule only makes a final decision for those 14 discharges that will not require controls. These 14 discharges were excluded from control because they exhibit a low potential for causing adverse impacts on the marine environment. Therefore, EPA and DOD have determined that this is not an action that will affect coral reef ecosystems. EPA and DOD will examine the effects of regulated UNDS discharges on coral reefs during Phase II of the UNDS rulemaking, which will establish performance standards for the 25 discharges identified in Phase I as requiring control.

Under Executive Order 13112 (64 FR 6183, Feb 8, 1999), each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, identify such actions, and, subject to the availability of appropriations, use relevant programs and authorities to, among other things, prevent, detect, control, and monitor the introduction of invasive species. As discussed above, during Phase I of the UNDS process, we evaluated all discharges for the potential to introduce invasive species. Any discharges that were identified as having the potential for introducing invasive species are required by this rule to be controlled by an MPCD. During Phase II, we will consider the control of invasive species when setting standards for these discharges.

B. Effect on State and Local Laws and Regulations

Today's rule affects State and local laws and regulations in several ways. Under CWA section 312(n)(6), States and their political subdivisions are prohibited from adopting or enforcing any State or local statute or regulation with respect to the discharges exempted from control (listed in Table 2) once this rule is in effect, other than to establish no-discharge zones for these discharges. States and their political subdivisions will be similarly prohibited from adopting or enforcing any statutes or regulations affecting the discharges requiring marine pollution control devices (listed in Table 1) once regulations governing MPCDs for those discharges are in effect.

Second, this rule establishes the procedural mechanisms by which a State may petition EPA and DOD to review whether a discharge should be controlled by a MPCD. Finally, this rule codifies the process for establishing no-discharge zones (where any release of a

specified discharge is prohibited) where necessary to protect and enhance the quality of some or all of the waters within a State. These procedures, contained in 40 CFR 1700.6 through 1700.13, are discussed in the preamble for the proposed rule (63 FR at 45326–45328).

II. Legal Authority and Background

A. Clean Water Act Statutory Requirements

This regulation is promulgated under the authority of section 312 and 502 of the Clean Water Act (33 U.S.C. 1322 and 1362). The Assistant Secretary of the Navy has been delegated the authority and responsibility of the Secretary of Defense to develop Uniform National Discharge Standards pursuant to section 312 of the Clean Water Act, including authority to sign this final action.

B. Summary of Public Outreach and Consultation With States, Tribes, and Federal Agencies

In developing this rule, EPA and DOD consulted with other interested Federal agencies, States, and environmental organizations. Other Federal agencies that have been involved in UNDS development include the Coast Guard (for the Department of Transportation), the Department of State, and the National Oceanic and Atmospheric Administration (for the Department of Commerce). The Coast Guard has been involved in all aspects of UNDS development. The other agencies have participated with the DOD, EPA, and the Coast Guard in the UNDS Executive Steering Committee, which is responsible for UNDS policy development and is composed of senior-level managers. Separately, the DOD and EPA have held discussions with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on UNDS matters.

Two mechanisms have been used to consult with States. First, a representative from the Environmental Council of the States (ECOS) is a member of the Executive Steering Committee. ECOS is the national association of State and territorial environmental commissioners and has been established, in part, to provide State positions on environmental issues to EPA. Second, representatives from the Navy (as the lead for the DOD), EPA, and the Coast Guard met with each State expressing an interest in the UNDS development. Information on participation of States in the consultation meetings and the subjects discussed is presented in the Technical Development Document and supporting documents in the public record for this rule. See ''Uniform National Discharge Standards (UNDS) State Consultation Meetings (Round #1) Compendium of Minutes'' and ''Uniform National Discharge Standards (UNDS) Consultation Meetings (Round #2) Compendium of Minutes.''

The Navy and EPA publish a newsletter that contains feature articles on UNDS-related subjects (e.g., nonindigenous species, Navy research and development programs), provides answers to frequently asked questions, and provides an update on recent progress and upcoming events. The newsletter is mailed to State and environmental group representatives, Armed Forces and EPA contacts, and interested members of the general public. The Navy also maintains an UNDS web site on the Internet (http://206.5.146.100/n45/doc/unds/unds.html) that provides UNDS legislative information, a summary of the technical and management approach to rule development, and a description of the benefits expected to result from the development of UNDS.

In August 1998, EPA and DOD also sent an informational letter and fact sheet on UNDS to members of EPA's Tribal Operations Committee and 38 intertribal organizations. The Tribal Operations Committee is comprised of 19 Tribal leaders or their Environmental Program Managers (referred to as the ''Tribal Caucus'') and EPA's Senior Leadership Team, including the Administrator, the Deputy Administrator and EPA's Assistant Administrators and Regional Administrators.

III. Description of Armed Forces Vessels

Section 312(a)(14) of the CWA, as amended by the National Defense Authorization Act of 1996, defines a vessel of the Armed Forces as ''(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and (B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel [owned or operated by the DOD].'' Section 312 of the CWA defines new vessel and existing vessel as every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters of the United States. See CWA sections 312(a)(1) and 312(a)(2). Also see 40 CFR 140.1(d).

The scope of the UNDS legislation addresses incidental discharges from over 7,000 vessels (i.e., ships, submarines, and small boats and craft) of differing designs and mission requirements. The Armed Forces that operate vessels subject to UNDS include the Navy, Military Sealift Command, Army, Marine Corps, Air Force, and Coast Guard. Table 3 summarizes the number of vessels operated by each of these branches of the Armed Forces as of August 1997. Armed Forces vessels and their operating locations are discussed in more detail in the Technical Development Document and in the preamble to the proposed rule. See 63 FR at 45302–45304.

This rule applies only to Armed Forces vessels. This rule does not apply to commercial vessels; privately owned vessels; vessels owned or operated by State, local, or tribal governments; vessels under the jurisdiction of the Army Corps of Engineers; vessels, other than those of the Coast Guard, under the jurisdiction of the Department of Transportation; vessels owned or operated by other Federal agencies that are not part of the Armed Forces; vessels preserved as memorials and museums; time- and voyage-chartered vessels; vessels under construction; vessels in drydock; and amphibious vehicles. For additional discussion regarding the types of vessels that are beyond the scope of this rule, see the Technical Development Document.

TABLE 3.—NUMBER OF ARMED FORCES VESSELS (AUGUST 1997)

Branch of armed forces	Number of vessels
Navy	4,760
Military Sealift Command	57
Army	334
Marine Corps	538
Air Force	36
Coast Guard	1,445
Total:	7,170

IV. Developments Since Proposal

A. Peer Review

A technical report was prepared for each of the discharges covered by this rule. These Nature of Discharge (NOD) reports include a discussion of how the discharge is generated, discharge volumes and frequencies, where the discharge occurs, chemical constituents present in the discharge, and relevant regulatory information. The NOD reports also present an assessment of the potential for a discharge to cause an adverse impact on the marine environment. NOD reports for each discharge are included as an appendix

to the Technical Development Document.

NOD reports for five discharges were selected for peer review. Peer reviewers were asked whether the data and process information presented in the NOD reports are sufficient to characterize the discharges; whether the analyses are appropriate for the discharges; and whether the conclusions regarding the discharges' potential for causing adverse environmental impacts are supported by the information presented in the NOD reports.

Comments submitted by the peer reviewers are compiled in the ''Peer Review Comments Document for Nature of Discharge Reports,'' which is in the rulemaking record. Specific responses to peer review comments and how those comments were addressed in developing the final rule are provided in the document titled ''Uniform National Discharge Standards for Vessels of the Armed Forces Phase I Response to Peer Review Comments.'' Except as discussed below, the changes resulting from peer review were largely editorial.

Upon reviewing the comments, EPA and DOD reassessed the steam condensate discharge by comparing the constituent concentrations to chronic, rather than acute, water quality criteria because the discharge can be either intermittent or continuous. The constituents exceeding the chronic criteria are the same as those exceeding the acute water quality criteria. As discussed in the preamble to the proposed rule, EPA and DOD determined that because of the low mass loadings released in the discharge (a fleetwide total of 49 lbs/year copper and 28 lbs/year nickel; the mass discharged in any given port is only a fraction of that total), the steam condensate discharge has a low potential to cause an adverse impact on the marine environment. Comparing the steam condensate discharge to chronic water quality criteria does not change this conclusion.

Several comments addressed the thermal analysis of the steam condensate discharge. The potential for adverse thermal impacts from the steam condensate discharge is discussed below in section IV.B.2 of the preamble.

B. Public Comments

Only two letters providing comments on the proposed rule were received—both from States. The most significant of these comments addressed:

- The types of MPCDs that should be considered in setting performance standards or the constituents the MPCDs should be designed to remove;
- The methodology used in Phase I to assess the potential for discharges to cause adverse impacts on the marine environment;
- The relationship of UNDS to the establishment of total maximum daily loads (TMDLs) for waterbodies and the imposition of wasteload allocations; and
- The exclusion of National Defense Reserve Fleet vessels from UNDS requirements.

A detailed discussion of EPA and DOD's responses to the comments on the proposed rule is provided in ''Response to Public Comments on Proposed Uniform National Discharge Standards, Phase I,'' which is in the rulemaking record. An overview of the more significant comments is presented below.

1. MPCD Design

The comments regarding MPCDs generally raised issues that will be addressed during the development of the Phase II rule and are beyond the scope of this Phase I rule. For example, the comments suggested that pierside MPCDs should be considered during the development of UNDS and identified certain constituents that MPCDs should be designed to remove (i.e., pathogens in graywater, and non-indigenous aquatic species in dirty ballast water and compensated fuel ballast water). In UNDS Phase II, EPA and DOD will perform a more detailed assessment of the MPCD control options available for each class of vessels and promulgate MPCD performance standards for the discharges requiring control.

2. Environmental Assessment Methodology

With respect to the comments about the environmental assessment methodology used for this rule, EPA and DOD believe that the analyses performed for this rule are consistent with the requirements of CWA section 312(n) and are sufficient for the purpose of determining which discharges should require the use of a MPCD to mitigate adverse impacts on the marine environment, and to determine for which discharges it is not reasonable and practicable to require the use of a MPCD to mitigate adverse impacts on the marine environment.

In response to public and peer review comments regarding the hydrodynamic model used to evaluate the thermal effects from steam condensate discharges, EPA and DOD reanalyzed the discharge plume characteristics. First, EPA and DOD reassessed the thermal effects model used at proposal to confirm that accurate values had been used for input parameters such as current velocity and air temperature. This review identified several instances where overly conservative values had been used at proposal (e.g., information in the record shows that a more accurate discharge temperature for modeling thermal effects is 180°F rather than the original 212°F), resulting in overstating the thermal effects. EPA and DOD corrected these values in its modeling for the final rule, as discussed in detail in the comment response documents for public and peer review comments, and in the Technical Development Document.

EPA and DOD also used a more sophisticated model capable of predicting the plume size and temperature, taking into account factors (e.g., tidal effects and turbulent mixing in the water body) that are not adequately taken into account by the model used at proposal. This hydrodynamic and transport model, CH3D, predicts the thermal plume from an aircraft carrier will extend no more than 80 meters from the discharge pipe along the length of the vessel (not extending beyond the end of the ship) and 30 meters away from the vessel.

The thermal plume from other ships typically docked in Bremerton, Washington was also reassessed using these corrected values. The model results indicate that these ships will not generate a thermal plume exceeding Washington State thermal criteria, and that aircraft carriers are the only vessels that may exceed criteria.

Both the original and more sophisticated models continue to overestimate the size of the thermal plume because they do not account adequately for either the mixing that initially occurs as the discharge enters the receiving water or the loss of heat to the atmosphere. However, EPA and DOD note that for an aircraft carrier, the predicted plume would cover only about 5% of the width and 2% of the length (less than 0.1% of the total surface area) of the inlet where the ships are docked. Such a localized plume would have a low potential for interfering with the passage of aquatic organisms in the water body and would have a limited impact on the organisms that reside near the water surface. In addition, because the discharge is freshwater (no salinity) and warmer than the receiving water, the plume floats along the surface of the water and has no significant impact on bottom-dwelling organisms. Therefore, the steam condensate discharge has a low potential to cause adverse impacts on the marine environment and the discharge does not require control by a MPCD.

3. TMDL/Wasteload Allocations

One commenter asserted that, where Armed Forces vessels are identified as sources contributing to violations of water quality standards, States should be allowed to impose a wasteload allocation to Armed Forces vessels even if it causes the vessels to install pollution control devices not identified by uniform national discharge standards. EPA and DOD disagree with the commenter's assertion. Even though Armed Forces vessels may discharge chemical substances for which TMDLs are being written, section 312(n)(6) of the CWA preempts States from regulating these discharges once the UNDS regulations are effective, including issuing a wasteload allocation (WLA) for these discharges. A State, however, may avail itself of the provisions in CWA section 312(n)(7) to establish a no-discharge zone, either through State prohibition or EPA prohibition (see 40 CFR 1700.7–1700.10).

It is also noted that the UNDS legislation amended the CWA to exclude from the definition of ''pollutant'' a ''discharge incidental to the normal operation of a vessel of the Armed Forces'' within the meaning of section 312 of the CWA. CWA § 502(6). Because CWA section 303(d)(1)(C) provides that States establish TMDLs for ''pollutants'' which the Administrator identifies under section 402(a)(2) as suitable for such calculation, and because Armed Forces vessel discharges are not ''pollutants'' as that term is defined in the CWA, EPA and DOD interpret the CWA to mean that TMDLs may not be written for discharges incidental to the normal operation of a vessel of the Armed Forces.

4. National Defense Reserve Fleet (NDRF) Vessels

In its comments, one State questioned the reason for excluding NDRF vessels from the requirements of UNDS. Under CWA section 312(a)(14), a vessel owned or operated by the Department of Transportation is not defined as a ''vessel of the Armed Forces''—and thus is not subject to uniform national discharge standards—unless it has been designated by the Secretary of Transportation as being ''a vessel equivalent to a vessel [owned or operated by the Department of Defense].'' NDRF vessels are owned or operated by the Department of Transportation, and they have not been designated by the Secretary of Transportation as being equivalent to vessels owned or operated by DOD. Consequently, NDRF vessels are not vessels of the Armed Forces, as defined by the statute, and they are not subject to uniform national discharge standards.

V. Related Acts of Congress and Executive Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), EPA and DOD must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this Phase I rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. Thus today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not significantly or uniquely affect small governments because the preemption that occurs after promulgation of this rule applies to both large governments (States) as well as their political subdivisions (which would include small governments). Further, the preemption originates from the CWA rather than this rule. Finally, the no-discharge zone procedures in the rule would apply only to States, not their political subdivisions. Thus, this rule is not subject to the requirements of Section 203 of the UMRA. Nevertheless, as described elsewhere in this preamble and in the record for the rule, DOD and EPA sought meaningful and timely input from States and localities on this rule.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a

description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. As previously discussed, this rule does not impose any mandates on tribal governments. Further, as discussed elsewhere in this preamble and the record to the rule, EPA and DOD do not anticipate any significant or unique effects to communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA and DOD generally are required to prepare a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if the Administrator of EPA and the Secretary of Defense certify that the rule will not have a significant economic impact on a substantial number of small entities, EPA and DOD are not required to prepare that analysis. The RFA recognizes three kinds of small entities, and defines them as follows: (1) Small governmental jurisdictions: any government of a district with a population of less than 50,000; (2) Small business: any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act; and (3) Small organization: any not for profit enterprise that is independently owned and operated and not dominant in its field. This Phase I rule addresses discharges from vessels of the Armed Forces and imposes information collection requirements on States that wish to establish no-discharge zones or petition the Secretary of Defense and the Administrator to review a determination regarding the need for a marine pollution control device or a standard issued under Phase II of the rule. Small entities are not affected by this rule. Pursuant to section 605(b) of the RFA, the Administrator and the Secretary certify that this Phase I rule will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as an amendment to the collection assigned OMB control number 2040–0187. There were no OMB or public comments on this information collection request.

There are three information collections associated with this rule, each of which is required by statute in order for a State to obtain a benefit. Each information collection is discussed separately below (including authority and projected annual hour and cost burdens). The total projected annual hour burden for all three information collections is 958 hours; the projected annual cost burden is $31,871.

In order for a State to establish a No-discharge Zone (NDZ) by State prohibition, EPA must make the following determinations: (i) that adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and (ii) that the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel (see CWA section 312(n)(7)(A), 33 U.S.C. 1322(n)(7)(A)). The State must provide EPA enough information to be able to make those determinations. The specific information being requested is listed in 40 CFR 1700.9(a). The information requested from the State will be used by EPA to make the determinations it is required to make by law in order for a State prohibition to be effective.

The projected annual hour burden for requests by a State to EPA to make the determinations required for the State to establish a NDZ by State prohibition is 717 hours (with an average of 179.25 burden hours per response and an estimated 4 respondents per year). The projected annual cost burden is $23,815 (with an average of $23,215 for labor, $0 for capital and start-up costs, $600 for operation and maintenance, and $0 for the purchase of services).

In order for EPA to establish a NDZ by EPA prohibition (upon application of a State), EPA must make the following determinations: (i) that the protection and enhancement of the quality of the specified waters require a prohibition of the discharge; (ii) that adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and (iii) that the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel (see CWA section 312(n)(7)(B), 33 U.S.C. 1322(n)(7)(B)). The State must provide EPA enough information to be able to make those determinations. The specific information being requested is listed in 40 CFR 1700.10(a). The information requested from the State will be used by EPA to make the determinations it is

required to make by law in order to establish a NDZ.

The projected annual hour burden for applications by a State to EPA to establish a NDZ by EPA prohibition is 194.25 hours (with an average of 194.25 burden hours per response and an estimated 1 respondent per year). The projected annual cost burden is $6,478 (with an average of $6,328 for labor, $0 for capital and start-up costs, $150 for operation and maintenance, and $0 for the purchase of services).

The Governor of any State may request EPA and the Secretary of Defense to review (i) a determination of whether an UNDS discharge requires a control, or (ii) a standard of performance for a control on an UNDS discharge, by submitting a petition which discusses significant new scientific and technical information that could reasonably result in a change to the determination or standard (see CWA section 312(n)(5)(D), 33 U.S.C. 1322(n)(5)(D)). The State must provide EPA this information and a discussion of how the information is relevant to one or more of the seven factors which EPA and the Secretary of Defense are required to consider in making these determinations and standards (see CWA section 312(n)(2)(B), 33 U.S.C. 1322(n)(2)(B)). These requirements are listed in 40 CFR 1700.12. The information requested from the State will be used by EPA and the Secretary of Defense in order to review any determinations and standards promulgated under UNDS.

The projected annual hour burden for petitions from a State to EPA and DOD to review a determination or standard is 46.25 hours (with an average of 46.25 burden hours per response and an estimated 1 respondent per year). The projected annual cost burden is $1,578 (with an average of $1,428 for labor, $0 for capital and start-up costs, $150 for operation and maintenance, and $0 for the purchase of services).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

G. Executive Order 13045

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866 and it does not establish an environmental standard intended to mitigate health or safety risks.

H. Endangered Species Act

EPA and DOD have discussed the applicability of the Endangered Species Act (ESA) to the three phases of the Uniform National Discharge Standards rulemaking with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. As Phase I is a preliminary step, simply identifying the discharges that will require control and the discharges that will not require control, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have agreed that the consultation requirements of section 7 of the ESA do not apply to this rule. If EPA and DOD determine that Phase II may affect listed species, EPA and DOD will initiate consultation during Phase II of the UNDS rulemaking, which will establish performance standards for the discharges identified in Phase I as requiring control.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA and DOD are required to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA or DOD, the Act requires the Agency and Department to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA and DOD find that this rule does not address any technical standards subject to the NTTAA. It simply addresses which discharges would or would not require a MPCD.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 9, 1999.

Appendix to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

Administrator—The Administrator of the U.S. Environmental Protection Agency

CFR—U.S. Code of Federal Regulations

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*)

CWA—Clean Water Act

DOD—U.S. Department of Defense

EPA—U.S. Environmental Protection Agency
MPCD—Marine pollution control device
NDRF—National Defense Reserve Fleet
No-discharge zone—An area of water into which one or more specified discharges is prohibited, as established under procedures set forth in 40 CFR 1700.7 to 1700.10
UNDS—Uniform national discharge standards

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 1700

Environmental protection, Armed Forces, Vessels, Coastal zone, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 27, 1999.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Dated: April 7, 1999.

Robert B. Pirie, Jr.,

Assistant Secretary of the Navy (Installations and Environment).

For the reasons set forth in the preamble, EPA amends 40 CFR Chapter I and EPA and DOD establish 40 CFR chapter VII of the Code of Federal Regulations consisting of part 1700 as follows:

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006. 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq.,1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. P.973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

40 CFR CHAPTER VII—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE

2. In § .9.1 the table is amended by adding a new heading with an entry in numerical order to read as follows:

§ .9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
Uniform National Discharge Standards for Vessels of the Armed Forces	
1700.9–1700.12	2040–0187
* * * * * * *	

3. Chapter VII consisting of Part 1700 is established to read follows:

CHAPTER VII—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE; UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES

PART 1700—UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES

Subpart A—Scope

Sec.
1700.1 Applicability.
1700.2 Effect.
1700.3 Definitions.

Subpart B—Discharge Determinations

1700.4 Discharges requiring control.
1700.5 Discharges not requiring control.

Subpart C—Effect on States

1700.6 Effect on State and local statutes and regulations.

No-Discharge Zones

1700.7 No-discharge zones.
1700.8 Discharges for which no-discharge zones can be established.
1700.9 No-discharge zones by State prohibition.
1700.10 No-discharge zones by EPA prohibition.

State Petition for Review

1700.11 State petition for review of determinations or standards.
1700.12 Petition requirements.
1700.13 Petition decisions.

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

1700.14 Marine Pollution Control Device (MPCD) Performance Standards. [reserved]

Authority: 33 U.S.C. 1322, 1361.

Subpart A—Scope

§ 1700.1 Applicability.

(a) This part applies to the owners and operators of Armed Forces vessels, except where the Secretary of Defense finds that compliance with this part is not in the interest of the national security of the United States. This part does not apply to vessels while they are under construction, vessels in drydock, amphibious vehicles, or vessels under the jurisdiction of the Department of Transportation other than those of the Coast Guard.

(b) This part also applies to States and political subdivisions of States.

§ 1700.2 Effect.

(a) This part identifies those discharges, other than sewage, incidental to the normal operation of Armed Forces vessels that require control within the navigable waters of the United States and the waters of the contiguous zone, and those discharges that do not require control. Discharges requiring control are identified in § 1700.4. Discharges not requiring control are identified in § 1700.5. Federal standards of performance for each required Marine Pollution Control Device are listed in § 1700.14. This part is not applicable beyond the contiguous zone.

(b) This part prohibits States and their political subdivisions from adopting or enforcing State or local statutes or regulations controlling the discharges from Armed Forces vessels listed in §§ 1700.4 and 1700.5 according to the timing provisions in § 1700.6, except to establish a no-discharge zone by State prohibition in accordance with § 1700.9, or to apply for a no-discharge zone by EPA prohibition in accordance with § 1700.10. This part also provides a mechanism for States to petition the Administrator and the Secretary to review a determination of whether a discharge requires control, or to review a Federal standard of performance for a Marine Pollution Control Device, in accordance with §§ 1700.11 through 1700.13.

§ 1700.3 Definitions.

Administrator means the Administrator of the United States Environmental Protection Agency or that person's authorized representative.

Armed Forces vessel means a vessel owned or operated by the United States Department of Defense or the United States Coast Guard, other than vessels that are time or voyage chartered by the Armed Forces, vessels of the U.S. Army Corps of Engineers, or vessels that are memorials or museums.

Discharge incidental to the normal operation of a vessel means a discharge, including, but not limited to: graywater, bilgewater, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective,

preservative, or absorptive application to the hull of a vessel; and a discharge in connection with the testing, maintenance, and repair of any of the aforementioned systems whenever the vessel is waterborne, including pierside. A discharge incidental to normal operation does not include:

(1) Sewage;

(2) A discharge of rubbish, trash, or garbage;

(3) A discharge of air emissions resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator;

(4) A discharge that requires a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act; or

(5) A discharge containing source, special nuclear, or byproduct materials regulated by the Atomic Energy Act.

Environmental Protection Agency, abbreviated EPA, means the United States Environmental Protection Agency.

Marine Pollution Control Device, abbreviated MPCD, means any equipment or management practice installed or used on an Armed Forces vessel that is designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel, and that is determined by the Administrator and Secretary to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations in Clean Water Act section 312(n)(2)(B).

No-discharge zone means an area of specified waters established pursuant to this regulation into which one or more specified discharges incidental to the normal operation of Armed Forces vessels, whether treated or untreated, are prohibited.

Secretary means the Secretary of the United States Department of Defense or that person's authorized representative.

United States includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on navigable waters of the United States or waters of the contiguous zone, but does not include amphibious vehicles.

Subpart B—Discharge Determinations

§ 1700.4 Discharges requiring control.

For the following discharges incidental to the normal operation of Armed Forces vessels, the Administrator and the Secretary have determined that it is reasonable and practicable to require use of a Marine Pollution Control Device for at least one class of vessel to mitigate adverse impacts on the marine environment:

(a) Aqueous Film-Forming Foam: the firefighting foam and seawater mixture discharged during training, testing, or maintenance operations.

(b) Catapult Water Brake Tank & Post-Launch Retraction Exhaust: the oily water skimmed from the water tank used to stop the forward motion of an aircraft carrier catapult, and the condensed steam discharged when the catapult is retracted.

(c) Chain Locker Effluent: the accumulated precipitation and seawater that is emptied from the compartment used to store the vessel's anchor chain.

(d) Clean Ballast: the seawater taken into, and discharged from, dedicated ballast tanks to maintain the stability of the vessel and to adjust the buoyancy of submarines.

(e) Compensated Fuel Ballast: the seawater taken into, and discharged from, ballast tanks designed to hold both ballast water and fuel to maintain the stability of the vessel.

(f) Controllable Pitch Propeller Hydraulic Fluid: the hydraulic fluid that discharges into the surrounding seawater from propeller seals as part of normal operation, and the hydraulic fluid released during routine maintenance of the propellers.

(g) Deck Runoff: the precipitation, washdowns, and seawater falling on the weather deck of a vessel and discharged overboard through deck openings.

(h) Dirty Ballast: the seawater taken into, and discharged from, empty fuel tanks to maintain the stability of the vessel.

(i) Distillation and Reverse Osmosis Brine: the concentrated seawater (brine) produced as a byproduct of the processes used to generate freshwater from seawater.

(j) Elevator Pit Effluent: the liquid that accumulates in, and is discharged from, the sumps of elevator wells on vessels.

(k) Firemain Systems: the seawater pumped through the firemain system for firemain testing, maintenance, and training, and to supply water for the operation of certain vessel systems.

(l) Gas Turbine Water Wash: the water released from washing gas turbine components.

(m) Graywater: galley, bath, and shower water, as well as wastewater from lavatory sinks, laundry, interior deck drains, water fountains, and shop sinks.

(n) Hull Coating Leachate: the constituents that leach, dissolve, ablate, or erode from the paint on the hull into the surrounding seawater.

(o) Motor Gasoline and Compensating Discharge: the seawater taken into, and discharged from, motor gasoline tanks to eliminate free space where vapors could accumulate.

(p) Non-Oily machinery wastewater: the combined wastewater from the operation of distilling plants, water chillers, valve packings, water piping, low- and high-pressure air compressors, and propulsion engine jacket coolers.

(q) Photographic Laboratory Drains: the laboratory wastewater resulting from processing of photographic film.

(r) Seawater Cooling Overboard Discharge: the discharge of seawater from a dedicated system that provides noncontact cooling water for other vessel systems.

(s) Seawater Piping Biofouling Prevention: the discharge of seawater containing additives used to prevent the growth and attachment of biofouling organisms in dedicated seawater cooling systems on selected vessels.

(t) Small Boat Engine Wet Exhaust: the seawater that is mixed and discharged with small boat propulsion engine exhaust to cool the exhaust and quiet the engine.

(u) Sonar Dome Discharge: the leaching of antifoulant materials into the surrounding seawater and the release of seawater or freshwater retained within the sonar dome.

(v) Submarine Bilgewater: the wastewater from a variety of sources that accumulates in the lowest part of the submarine (i.e., bilge).

(w) Surface Vessel Bilgewater/Oil-Water Separator Effluent: the wastewater from a variety of sources that accumulates in the lowest part of the vessel (the bilge), and the effluent produced when the wastewater is processed by an oil water separator.

(x) Underwater Ship Husbandry: the materials discharged during the inspection, maintenance, cleaning, and repair of hulls performed while the vessel is waterborne.

(y) Welldeck Discharges: the water that accumulates from seawater flooding of the docking well (welldeck) of a vessel used to transport, load, and unload amphibious vessels, and from maintenance and freshwater washings of the welldeck and equipment and vessels stored in the welldeck.

§ 1700.5 Discharges not requiring control.

For the following discharges incidental to the normal operation of Armed Forces vessels, the Administrator and the Secretary have

determined that it is not reasonable or practicable to require use of a Marine Pollution Control Device to mitigate adverse impacts on the marine environment:

(a) Boiler Blowdown: the water and steam discharged when a steam boiler is blown down, or when a steam safety valve is tested.

(b) Catapult Wet Accumulator Discharge: the water discharged from a catapult wet accumulator, which stores a steam/water mixture for launching aircraft from an aircraft carrier.

(c) Cathodic Protection: the constituents released into surrounding water from sacrificial anode or impressed current cathodic hull corrosion protection systems.

(d) Freshwater Lay-up: the potable water that is discharged from the seawater cooling system while the vessel is in port, and the cooling system is in lay-up mode (a standby mode where seawater in the system is replaced with potable water for corrosion protection).

(e) Mine Countermeasures Equipment Lubrication: the constituents released into the surrounding seawater by erosion or dissolution from lubricated mine countermeasures equipment when the equipment is deployed and towed.

(f) Portable Damage Control Drain Pump Discharge: the seawater pumped through the portable damage control drain pump and discharged overboard during testing, maintenance, and training activities.

(g) Portable Damage Control Drain Pump Wet Exhaust: the seawater mixed and discharged with portable damage control drain pump exhaust to cool the exhaust and quiet the engine.

(h) Refrigeration and Air Conditioning Condensate: the drainage of condensed moisture from air conditioning units, refrigerators, freezers, and refrigerated spaces.

(i) Rudder Bearing Lubrication: the oil or grease released by the erosion or dissolution from lubricated bearings that support the rudder and allow it to turn freely.

(j) Steam Condensate: the condensed steam discharged from a vessel in port, where the steam originates from port facilities.

(k) Stern Tube Seals and Underwater Bearing Lubrication: the seawater pumped through stern tube seals and underwater bearings to lubricate and cool them during normal operation.

(l) Submarine Acoustic Countermeasures Launcher Discharge: the seawater that is mixed with acoustic countermeasure device propulsion gas following a countermeasure launch that is then exchanged with surrounding seawater, or partially drained when the launch assembly is removed from the submarine for maintenance.

(m) Submarine Emergency Diesel Engine Wet Exhaust: the seawater that is mixed and discharged with submarine emergency diesel engine exhaust to cool the exhaust and quiet the engine.

(n) Submarine Outboard Equipment Grease and External Hydraulics: the grease released into the surrounding seawater by erosion or dissolution from submarine equipment exposed to seawater.

Subpart C—Effect on States

§ 1700.6 Effect on State and local statutes and regulations.

(a) After the effective date of a final rule determining that it is not reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge, except that States may establish a no-discharge zone by State prohibition (as provided in § 1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10).

(b)(1) After the effective date of a final rule determining that it is reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States may apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10) for that discharge.

(2) After the effective date of a final rule promulgated by the Secretary governing the design, construction, installation, and use of a Marine Pollution Control Device for a discharge listed in § 1700.4, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge except that States may establish a no-discharge zone by State prohibition (as provided in § 1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10).

(c) The Governor of any State may submit a petition requesting that the Administrator and Secretary review a determination of whether a Marine Pollution Control Device is required for any discharge listed in § 1700.4 or § 1700.5, or review a Federal standard of performance for a Marine Pollution Control Device.

No-Discharge Zones

§ 1700.7 No-discharge zones.

For this part, a no-discharge zone is a waterbody, or portion thereof, where one or more discharges incidental to the normal operation of Armed Forces vessels, whether treated or not, are prohibited. A no-discharge zone is established either by State prohibition using the procedures in § 1700.9, or by EPA prohibition, upon application of a State, using the procedures in § 1700.10.

§ 1700.8 Discharges for which no-discharge zones can be established.

(a) A no-discharge zone may be established by State prohibition for any discharge listed in § 1700.4 or § 1700.5 following the procedures in § 1700.9. A no-discharge zone established by a State using these procedures may apply only to those discharges that have been preempted from other State or local regulation pursuant to § 1700.6.

(b) A no-discharge zone may be established by EPA prohibition for any discharge listed in § 1700.4 or § 1700.5 following the procedures in § 1700.10.

§ 1700.9 No-discharge zones by State prohibition.

(a) A State seeking to establish a no-discharge zone by State prohibition must send to the Administrator the following information:

(1) The discharge from § 1700.4 or § 1700.5 to be prohibited within the no-discharge zone.

(2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.

(3) A determination that the protection and enhancement of the waters described in paragraph (a)(2) of this section require greater environmental protection than provided by existing Federal standards.

(4) A complete description of the facilities reasonably available for collecting the discharge including:

(i) A map showing their location(s) and a written location description.

(ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.

(iii) The schedule of operating hours of the facilities.

(iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.

(v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.

(5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying the prohibition to all vessels in the area, the State must demonstrate the technical or environmental basis for applying the prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:

(i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.

(ii) A description of State efforts to control the discharge from non-Armed Forces vessels.

(b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the two determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of any prohibition on Armed Forces vessels.

(1) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.

(2) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessels.

(c) EPA will notify the State in writing of the result of the determinations under paragraph (b) of this section, and will provide a written explanation of any negative determinations. A no-discharge zone established by State prohibition will not go into effect until EPA determines that the conditions of paragraph (b) of this section have been met.

§ 1700.10 No-discharge zones by EPA prohibition.

(a) A State requesting EPA to establish a no-discharge zone must send to the Administrator an application containing the following information:

(1) The discharge from § 1700.4 or § 1700.5 to be prohibited within the no-discharge zone.

(2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.

(3) A technical analysis showing why protection and enhancement of the waters described in paragraph (a)(2) of this section require a prohibition of the discharge. The analysis must provide specific information on why the discharge adversely impacts the zone and how prohibition will protect the zone. In addition, the analysis should characterize any sensitive areas, such as aquatic sanctuaries, fish-spawning and nursery areas, pristine areas, areas not meeting water quality standards, drinking water intakes, and recreational areas.

(4) A complete description of the facilities reasonably available for collecting the discharge including:

(i) A map showing their location(s) and a written location description.

(ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.

(iii) The schedule of operating hours of the facilities.

(iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.

(v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.

(5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying a prohibition to other vessels in the area, the State must demonstrate the technical or environmental basis for applying a prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:

(i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.

(ii) A description of State efforts to control the discharge from non-Armed Forces vessels.

(b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the three determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of the prohibition on Armed Forces vessels.

(1) The protection and enhancement of the specified waters require a prohibition of the discharge.

(2) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.

(3) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, or the vessels.

(c) If the three conditions in paragraph (b) of this section are met, EPA will by regulation establish the no-discharge zone. If the conditions in paragraphs (b) (1) and (3) of this section are met, but the condition in paragraph (b)(2) of this section is not met, EPA may establish the no-discharge zone if it determines that the significance of the waters and the potential impact of the discharge are of sufficient magnitude to warrant any resulting constraints on Armed Forces vessels.

(d) EPA will notify the State of its decision on the no-discharge zone application in writing. If EPA approves the no-discharge zone application, EPA will by regulation establish the no-discharge zone by modification to this part. A no-discharge zone established by EPA prohibition will not go into effect until the effective date of the regulation.

State Petition for Review

§ 1700.11 State petition for review of determinations or standards.

The Governor of any State may submit a petition requesting that the Administrator and Secretary review a determination of whether a Marine Pollution Control Device is required for any discharge listed in § 1700.4 or § 1700.5, or review a Federal standard of performance for a Marine Pollution Control Device. A State may submit a petition only where there is new, significant information not considered previously by the Administrator and Secretary.

§ 1700.12 Petition requirements.

A petition for review of a determination or standard must include:

(a) The discharge from § 1700.4 or § 1700.5 for which a change in determination is requested, or the performance standard from § 1700.14 for which review is requested.

(b) The scientific and technical information on which the petition is based.

(c) A detailed explanation of why the State believes that consideration of the new information should result in a change to the determination or the standard on a nationwide basis, and an

explanation of how the new information is relevant to one or more of the following factors:

(1) The nature of the discharge.

(2) The environmental effects of the discharge.

(3) The practicability of using a Marine Pollution Control Device.

(4) The effect that installation or use of the Marine Pollution Control Device would have on the operation or operational capability of the vessel.

(5) Applicable United States law.

(6) Applicable international standards.

(7) The economic costs of the installation and use of the Marine Pollution Control Device.

§ 1700.13 Petition decisions.

The Administrator and the Secretary will evaluate the petition and grant or deny the petition no later than two years after the date of receipt of the petition. If the Administrator and Secretary grant the petition, they will undertake rulemaking to amend this part. If the Administrator and Secretary deny the petition, they will provide the State with a written explanation of why they denied it.

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

§ 1700.14 Marine Pollution Control Device (MPCD) Performance Standards. [Reserved.]

[FR Doc. 99–11164 Filed 5–7–99; 8:45 am]

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federal register

Monday
May 10, 1999

Part IV

Department of Education

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind; Notice

DEPARTMENT OF EDUCATION

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities for fiscal year (FY) 2000 and subsequent fiscal years

SUMMARY: The Secretary proposes funding priorities under the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program. The Secretary may use these priorities for competitions in FY 2000 and in subsequent years. The Secretary takes this action to assist with the establishment of interpreter training programs or to assist ongoing programs to train a sufficient number of qualified interpreters throughout the country to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind by— (a) Training new manual, tactile, oral, and cued speech interpreters; (b) Ensuring the maintenance of the skills of working interpreters; and (c) Providing opportunities for interpreters to raise their level of competence and expand their skills.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Address all comments about these proposed priorities to Mary Lovley, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 3217, Washington, DC 20202–2736. If you prefer to send your comments through the Internet, use the following address: Mary__Lovley@ed.gov

You must include the term ''Grants for Training Interpreters'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Mary Lovley. Telephone: (202) 205–9393. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is authorized under section 302(f) of the Rehabilitation Act of 1973, as amended.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed priorities support the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The proposed priorities further the objectives of this Goal by focusing available funds on projects that train a sufficient number of qualified interpreters throughout the country to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. Training and improving the manual, tactile, oral, and cued speech interpreting skills of interpreters working in vocational rehabilitation environments will improve the ability of individuals who are deaf or hard of hearing and individuals who are deaf-blind to function successfully in their vocational pursuits.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which the Secretary chooses to use any of these priorities, the Secretary invites applications through a notice in the **Federal Register**. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 1—National Project With Major Emphasis on Distance Education as a Medium for Interpreter Training

Background

Historically interpreter training programs have been located in colleges and universities in metropolitan areas or in areas of high population. While demand for interpreter services exceeds the supply of interpreters even in metropolitan areas, the dearth of interpreters in rural areas is marked. *A Study of Interpreter Services for Persons Who are Deaf or Hard of Hearing,* published in 1993, concluded that ''there is sufficient work/need for additional professional interpreters in every state and many major communities.'' Organizations such as the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf (RID) have also identified the shortage of qualified interpreters. Some States, such as Alaska, Idaho, Montana, Nebraska, Nevada, North Dakota, Rhode Island, Vermont, and West Virginia, as well as Puerto Rico, the U.S. Virgin Islands, and the Trust Territories of the Pacific other than Guam, have no degree granting interpreter training program. Due to the relatively sparse population in large geographical areas, student enrollment may not be sufficient to support interpreter training programs should they be established in these areas. As a result, individuals living in these States or areas who are interested in obtaining interpreter training must seek that training at a great distance from their homes. Further, the few working interpreters living in these States or areas who wish to maintain or upgrade their skills often find it difficult to locate nearby sources for continuing education. Distance education can help fill this void. The challenge, however, is to effectively deliver the interpreter training curricula, which is a skill-based, visual-based curricula rather than a knowledge-based or text-based curricula. Therefore, it is of critical importance that interpreter training curricula be modified to make the best use of a blend of all of the available technologies, such as video conferencing, internet web classes and chat rooms, e-mail, and voice mail. With proper curricular modifications, interpreter training can be provided via distance education to rural areas, remote locations, and areas with low populations in a cost-effective manner.

The Rehabilitation Services Administration (RSA) has determined that a national project is needed that will focus on adapting existing model interpreter training curricula used by two-year and four-year interpreter training programs for delivery via distance education. In addition, there is a need for technical assistance to, and coordination and cooperation with, interpreter training programs across the Nation on matters related to the use of distance education as a medium for interpreter training.

Priority

A project must—

- Be national in scope;
- Adapt or modify existing model interpreter training curricula or develop new appropriate interpreter training curricula for delivery via distance education and package it for easy use by the RSA-funded regional interpreter training projects and other trainers and interpreter training programs;
- Develop detailed instruction manuals to accompany each packaged curriculum;
- Provide technical assistance to interpreter training programs on the feasibility and effectiveness of distance interpreter education;
- Establish cooperative working relationships with the RSA-funded regional interpreter training projects;
- Furnish technical assistance to the RSA-funded regional interpreter training projects in developing and using distance education as a mechanism for training interpreters to meet the communication needs of individuals who are deaf, hard of hearing, or deaf-blind in their regions;
- Provide technical assistance and professional development opportunities for interpreter trainers across the Nation on the development and use of distance education as a mechanism for training interpreters to meet the communication needs of individuals who are deaf, hard of hearing, or deaf-blind. The technical assistance must address matters such as the proper use of the distance interpreter education curriculum; the proper use of the most current and available technologies, such as video conferencing, videotaping, internet web classes and chat rooms, e-mail, and voice mail; the technical infrastructure needed to successfully conduct distance interpreter education; and the policy implications and barriers that exist in providing distance interpreter education across a State or across State lines (e.g., classification of distance education students as in-State or out-of-State, the geographic area the institution is designed to serve, etc.); and
- Disseminate the packaged distance education curricula to interpreter educators nationwide.

Proposed Priority 2—National Project With Major Emphasis on Training Interpreter Educators

Background

In order to train qualified interpreters, interpreter educators must be both sufficient in number and current in knowledge and best practices. There are, however, very few programs that prepare interpreter educators to teach the interpreting process and the skill of interpreting. As a result, many faculty teaching at the 100-plus interpreter training programs have had little or no opportunity to study how to teach interpretation. Further, over the last 10 years RSA has funded the development of model curricula emphasizing the interpreting needs of culturally diverse communities, deaf-blind interpreting, and interpreting in educational and rehabilitation environments. Due to the low number of programs to train interpreter educators, this curriculum is not being shared widely and, as a result, is not being used extensively.

The model curricula on interpreting in educational environments and interpreting in rehabilitation environments is available at the National Clearinghouse of Rehabilitation Training Materials at Oklahoma State University, 5202 Richmond Hill Drive, Stillwater, OK 74078–4080. The model curricula on the interpreting needs of culturally diverse communities and interpreting for individuals who are deaf-blind are being developed under currently funded projects. These curricula will be available at the National Clearinghouse of Rehabilitation Training Materials once these projects have completed their activities. The project developing the model curriculum on the interpreting needs of culturally diverse communities ends on December 31, 2000, and the project developing the model curriculum on interpreting for individuals who are deaf-blind ends on September 30, 2000.

Another aspect of training a sufficient number of qualified interpreters is the practice of mentoring. Mentors are experienced interpreters and interpreter educators who provide one-on-one technical assistance to novice interpreters or to working interpreters who wish to improve or expand their skills or work toward certification. While ''mentoring is not a substitute for comprehensive interpreter education or for the internships and practicums associated with such formal training'' (RID Standard Practice Paper on ''Mentoring''), it supports and augments the training received in those settings. While the field of interpreting embraces the use of mentoring, there is no established uniform mechanism for training individuals to serve as mentors.

In order to train a sufficient number of qualified interpreters throughout the country, there is a need to increase the number of highly trained interpreter educators and mentors. A national project is needed to address these issues.

Priority

A project must—

- Be national in scope;
- Develop a new curriculum, or update a former or existing curriculum, to prepare interpreter educators and, once this is developed, use it to train both working interpreter educators who need to obtain, enhance, or update their training and new interpreter educators. This newly developed or updated curriculum must include all issues pertinent to the training of interpreters and the use of the model curricula developed by recent and current RSA-funded national interpreter training projects that emphasize the interpreting needs of culturally diverse communities, interpreting for deaf-blind individuals, and interpreting in educational and rehabilitation environments;
- Identify and update or develop a model mentor training curriculum that includes elements such as diagnostic assessment, goal setting, discourse analysis, and effective feedback provision and, once this is developed, train experienced interpreters or interpreter educators to serve as mentors. This mentor training program must train mentors to serve in a variety of situations or environments (i.e., in urban and rural settings; in various regions; in culturally diverse environments; in situations in which various modes of communication (deaf-blind, oral, cued speech, etc.) are present; in specialized settings (legal, medical, educational, etc.); and with interns at varying skill levels, etc.);
- Provide technical assistance to organizations or bodies establishing mentorship programs and to existing mentorship programs on all aspects of mentoring, including the identification of trained mentors;
- Ensure that the curricula are developed with input from a culturally diverse, consumer-based consortium;
- Ensure that training is available to culturally diverse audiences and is sensitive to the needs of all audiences;

- Use innovative as well as traditional approaches to the provision of training (i.e., distance education, short-term intensive training sessions or seminars, delivering training to communities in need, etc.); and
- Establish cooperative relationships with the regional interpreter training projects the Secretary plans to propose in fiscal year 2000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

We invite you to submit comments and recommendations regarding these proposed priorities. During and after the comment period, you may inspect all public comments about these proposed priorities in the Mary E. Switzer Building, Room 3217, 330 C Street, SW., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

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Program Authority: 29 U.S.C.772(f).

Dated: May 5, 1999.

(Catalog of Federal Domestic Assistance Number 84.160, Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–11703 Filed 5–7–99; 8:45 am]

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federal register

Monday
May 10, 1999

Part V

Securities and Exchange Commission

17 CFR Parts 240 and 249

Broker-Dealer Registration and Reporting; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–41356; File No. S7–17–96]

RIN 3235–AG69

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending Form BDW and related filing procedures under the Securities Exchange Act of 1934. The amendments implement changes recommended to allow filings from the World Wide Web. The amendments clarify Form BDW and its filing procedures. Some other minor rule revisions relating to the status of Form BDW as a report under the Securities Exchange Act of 1934 and when a filed Form BDW becomes effective are also being adopted.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Brian Baysinger, Attorney, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of its continuing effort to simplify the registration forms used by broker-dealers, the Securities and Exchange Commission (''Commission'') is revising Form BDW,[1] the uniform request for broker-dealer withdrawal under the Securities Exchange Act of 1934 (''Exchange Act'').[2] The amendments to Form BDW adopted today by the Commission are the result of discussions held among the Commission staff, the Forms/CRD Committee of the North American Securities Administrators Association, Inc. (''NASAA''), National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, and representatives of the securities industry. The amendments adopted today were proposed in Securities Exchange Act Release No. 37432.[3] The comment period for the Proposing Release ended on August 19, 1996. No comments were received.

By simplifying the form and clarifying its requirements, the revisions are designed to reduce the regulatory burden on broker-dealers and to improve the usefulness of the information contained in Form BDW to the Commission, self-regulatory organizations (''SROs''), and state securities regulators. The amendments are also designed to implement changes recommended in connection with changes to the Central Registration Depository system (''CRD'') that will allow filings from the World Wide Web. The CRD, a computer system operated by the NASD, maintains registration information regarding broker-dealers and their registered personnel for use by the Commission, SROs and state securities regulators.[4] The new system will be known as ''Web CRD''.[5]

The NASD anticipates Web CRD will become operational on August 16, 1999. Adoption of the amendments to Form BDW now will facilitate the NASD's implementation of the new system. Web CRD is expected to provide the Commission, SROs, and state securities regulators with (i) streamlined capture and display of data; (ii) better access to information through the use of standardized and specialized computer searches; and (iii) electronic filing by broker-dealers of uniform forms, including Forms BD, BDW, U–4, and U–5.[6] The Commission is also amending Exchange Act Rule 15b6–1[7] to permit broker-dealers that are withdrawing from registration to consent to a delay in the effectiveness of their notice of withdrawal. The amendments will also permit the Commission to extend the effective date for such period as the Commission by order may determine is necessary or appropriate in the public interest or for the protection of investors. The Commission is similarly amending Rules 15Bc3–1[8] and 15Cc1–1[9] relating to the withdrawal from registration of municipal securities dealers and government securities brokers and government securities dealers. These amendments are being adopted, in part, to provide the broker-dealers, municipal securities dealers and government securities brokers and government securities dealers adequate flexibility to bring their business operations to an orderly close in circumstances in which the 60-day period currently provided under Rule 15b6–1, 15Bc3–1 or 15Cc1–1 would not be sufficient. These amendments are also being adopted to provide the Commission greater flexibility in concluding investigations of broker-dealers, municipal securities dealers and government securities brokers and government securities dealers before they complete the withdrawal process.

The amendments to Rules 15b6–1, 15Bc3–1 and 15Cc1–1, together with amendments to Form BDW, are discussed further below.

II. Form BDW

A. Items 4, 5, 6, and 8

The Commission is amending Items 4, 5, 6, and 8 of Form BDW. Item 4 asks when the withdrawing broker-dealer stopped doing business and, in the case of partial withdrawals from registration,[10] when the broker-dealer stopped doing business in the states designated in Item 3. As currently drafted, Item 4 presumes that broker-dealers filing Form BDW are registered entities. Certain states, however, also require broker-dealers with pending applications for registration on Form BD to file Form BDW to withdraw their pending applications.[11] In order to accommodate those states, Item 4 is being amended to require disclosure of

[1] Form BDW is required to be used by all broker-dealers that seek to withdraw from registration with the Commission. *See* 17 CFR 240.15b6–1; 17 CFR 249.501a.

[2] 15 U.S.C. 78a *et seq.*

[3] Securities Exchange Act Release No. 37432 (July 12, 1996), 61 FR 37701 (July 19, 1996)(''Proposing Release''). The Proposing Release also proposed amendments relating to filing procedures for Forms BD and BDW that are not being adopted today because changes to the design of the CRD system made since the Proposing Release, have necessitated changes to those proposed filing procedures. The Commission is today proposing in a separate release revisions to Form BD, the rules and instructions relating to Form BD, and the filing procedures relating to Forms BD. *See* Securities Exchange Act Release No. 34–41351.

[4] The revisions to Form BDW in certain respects conform it to analogous amendments to Form BD that were adopted on July 12, 1996. Although adopted, those amendments to Form BD have not yet been implemented because Web CRD is not yet operational. *See* Securities Exchange Act Release No. 37431 (July 12, 1996), 61 FR 37701 (''Form BD Release''). The Commission is today proposing in a separate release further revisions to the adopted but not implemented Form BD that will facilitate its use on Web CRD scheduled to become operational on August 16, 1999. *See* Securities Exchange Act Release No. 34–41351.

[5] CRD/PD Bulletin, Volume 6, No. 5, March 1999 (available from the www.nasdr.com website).

[6] Forms BD and BDW are joint forms used by the Commission, certain; SROs, and all of the states to register, and terminate the registration of, broker-dealers. Forms U–4 and U–5 are used by the SROs and states to register, and terminate the employment of, broker-dealer personnel.

[7] 17 CFR 240.15b6–1.

[8] 17 CFR 240.15Bc3–1

[9] 17 CFR 240.15Cc1–1

[10] The instructions to the form have been revised to explain that a partial withdrawal terminates registration only with designated states and SROs, but does not terminate registration with the Commission and at least one SRO and state.

[11] The Commission does not require a broker-dealer that has an application for registration pending to file Form BDW in order to withdraw its pending application. Broker-dealers may withdraw a pending application simply by providing notice in writing to the Commission and the applicable SRO.

the date on which the broker-dealer withdrew its request for registration.

The Commission is also amending Item 5, which requests information concerning any funds and securities that withdrawing broker-dealers may owe to their customers or to other broker-dealers. Specifically, Item 5 requires disclosure of the number of customers to which funds or securities are owed, the amount of money and the market value of securities owed to customers or other broker-dealers, and the arrangements that have been made for payment. As amended, Item 5 will require a broker-dealer that files a partial withdrawal (i.e., a withdrawal from registration with a specific state or SRO) to provide the names of the states from which it is requesting withdrawal and in which it still owes customer funds or securities. This amendment will assist state securities regulators in monitoring the amount of funds or securities owed to customers in their states.

The proposed revisions to Item 5 will also change the requirement that broker-dealers submit a FOCUS report or a statement of financial condition when filing Form BDW. Currently, a broker-dealer is required to file with Form BDW, a FOCUS report or, if the broker-dealer is not subject to the FOCUS filing requirement, a statement of financial condition, regardless of whether the broker-dealer owes funds or securities to customers or to other broker-dealers. The Commission is reducing the filing burden on broker-dealers by requiring only that a FOCUS report or a statement of financial condition be filed with Form BDW when a broker-dealer is requesting full withdrawal from registration (i.e., a withdrawal from registration with the Commission, all SROs, and all states) and the broker-dealer owes money or securities to any customer or to any other broker-dealer.

In addition, the Commission is amending Item 6 of Form BDW, which requires disclosure of certain regulatory and other disciplinary matters that are also reportable on Form BD. Item 6 is being amended to delete the requirement that broker-dealers reiterate information already required to be disclosed on Form BD or elsewhere on Form BDW.[12] Instead, Item 6 will remind broker-dealers that they must update any incomplete or inaccurate disciplinary information on Form BD prior to filing Form BDW.[13]

Item 6 is also being amended to ask whether the broker-dealer is the subject of, or is named in, any investment-related investigation, consumer-initiated complaint, or private civil litigation. Item 6 currently requires disclosure if the broker-dealer is the subject of any ''proceeding'' not reported on Form BD, or any complaint or investigation. The question, therefore, is being revised to elicit more precise information by using specific, rather than general, terms.

Finally, the Commission is expanding Item 8, the execution paragraph, to require the registrant's agent to certify that the information contained on Form BDW is complete and current, and to certify further that all of the information on Form BD is accurate and complete at the time Form BDW is filed.

B. Instructions

The Commission is also expanding the general filing instructions to Form BDW to provide greater guidance to broker-dealers filing Form BDW.[14] The revised instructions also clarify attendant requirements that may arise out of filing Form BDW, particularly those raised by filing the form electronically with Web CRD. As amended, the instructions also include an explanation of the terms ''jurisdiction,'' ''investment-related,'' and ''investigation.''[15] These definitions are intended to assist broker-dealers in responding to questions about their disciplinary history and are consistent with the definitions adopted in the Form BD Release.[16]

C. Clarifying Amendments

In addition to the substantive amendments to Form BDW discussed above, the Commission is adopting several clarifying amendments to Form BDW. Item 3, for example, is being revised to inform broker-dealers that the ''SEC'' box should be checked only if a broker-dealer is intending to conduct an intrastate brokerage business and is not a municipal securities dealer.[17]

III. Rule 15b6–1

The Commission is also amending Exchange Act Rule 15b6–1,[18] which requires broker-dealers to file a notice of withdrawal on Form BDW in accordance with that form's instructions. The rule provides generally that withdrawal from broker-dealer registration automatically becomes effective 60 days after the filing date of the Form BDW, unless the Commission institutes a proceeding to impose terms or conditions upon the withdrawal.[19] As amended, the rule will also permit broker-dealers to consent to a delay in the effectiveness of their notice of withdrawal. In addition, the amendments will allow the Commission to extend the effective date of withdrawal for the period of time that the Commission determines is necessary or appropriate in the public interest or for the protection of investors. Under the rule, the Commission must make this determination by order.

As explained in the Proposing Release, the Commission determined that there may be circumstances in which it would be advisable to provide broker-dealers seeking to withdraw from registration greater flexibility in scheduling the termination of their business operations. While a broker-dealer must cease all securities activities when it files a request for withdrawal on Form BDW, it may need additional time to unwind its non-securities business operations before its Form BDW becomes effective. The Commission, too, may determine that it would be appropriate for a broker-dealer that is under investigation by the Commission to maintain its registered status in order to allow the Commission to conclude its pending investigation without

[12] Specifically, the question ''is broker-dealer now the subject of any unsatisfied customer claims for funds or securities not reported under Item 5'' would be deleted. These claims generally are already reportable under Item 5.

[13] Exchange Act Rule 15b3–1 [17 CFR 240.15b3–1] requires broker-dealers to amend any information on Form BD whenever it becomes inaccurate.

[14] The changes to Form BDW and its instructions are those identified in the proposing release except that the words ''or paper'' are being deleted from the second sentence of section ''A.1.'' of the Form BDW Instructions and the abbreviations ''ASE'' and ''PSE'' in section 3 of Form BDW are being updated to ''AMEX'' and ''PCX''.

[15] *E.g.*, the definition of the term ''investigation'' includes grand jury investigations, Commission investigations after the ''Wells'' notice has been given, formal investigations by SROs, or actions or procedures designated as investigations by states. The definition does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, ''blue sheet'' requests or other trading questionnaires, or examinations.

[16] See supra notes 1 and 4 and accompanying text.

[17] Exchange Act Rule 15Ba2–2 [17 CFR 240.15Ba2–2] requires a non-bank municipal securities dealer whose business is exclusively intrastate to file with its application on Form BD a statement that it is filing for registration as an intrastate dealer. Thus, a non-bank municipal securities dealer cannot conduct an intrastate municipal securities business without being registered with the Commission.

[18] 17 CFR 240.15b6–1. See also supra notes 6, 7 and 8 and accompanying text. The Commission is considering further amendments to Rules 15b6–1, 15Bc3–1, and 15Cc1–1 [17 CFR 240.15b6–1, 17 CFR 15Bc3–1, and 17 CFR 15Cc1–1] to provide for electronic filing of Form BDW with Web CRD.

[19] The amendment to Rule 15b6–1 [17 CFR 240.15b6–1] is consistent with a similar provision under Section 15(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)]. Section 15(b)(1) generally requires broker-dealer registration to be granted within 45 days after the filing of Form BD, unless the applicant consents to a longer period of time.

prematurely instituting a proceeding to impose conditions on the broker-dealer's withdrawal. In such instances, the interests of the Commission may be served by having the broker-dealer consent to an extension of the effective date of the broker-dealer's withdrawal from registration beyond the 60-day period currently provided under Rule 15b6–1. The Commission's interests also may be served by permitting the Commission to extend the effective date for a period that it determines by order is necessary or appropriate in the public interest or for the protection of investors.

Withdrawal from broker-dealer registration will continue to become effective automatically 60 days after the filing date in all other cases—that is, unless there has been express consent by the broker-dealer, the issuance of a Commission order, or the initiation of a proceeding by the Commission extending the effective date of withdrawal.

The Commission is similarly amending Rules 15Bc3–1 [20] and 15Cc1–1 [21] relating to the withdrawal from registration of municipal securities dealers and government securities brokers and government securities dealers.

IV. Conforming Amendments

The Commission is amending Exchange Act Rule 15b1–1 [22] to clarify that an application for registration filed on Form BD with the Central Registration Depository shall be considered a ''report'' filed with the Commission for purposes of Section 15(b) of the Exchange Act.[23] This amendment is intended to conform the language in Rule 15b1–1 with language already contained in corresponding rules governing the filing requirements for municipal securities dealers, government securities brokers, and government securities dealers. The Commission is also amending Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, and 15Cc1–1 under the Exchange Act [24] to clarify that the filing of Form BD or Form BDW by broker-dealers, municipal securities dealers, and government securities brokers and government securities dealers would, in each instance, constitute a ''report'' filed with the Commission within the meaning of Sections 15(b), 15B(c), 15C(c) 17(a), 18(a), and 32(a) of the Exchange Act.[25] The Commission is also amending Rule 15Ca1–1 to clarify when notice of government securities broker-dealer activities would be considered filed with the Commission.

V. Effective Date

Use of the revised Form BDW adopted today is intended to coincide with the implementation of Web CRD scheduled to begin on August 1, 1999. As a result, the amendments to Form BDW become effective on August 1, 1999. Thus, all Form BDW filings made on or after August 1, 1999 must be made on the revised Form BDW adopted today.

Amendments to Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1, and 15Cc1–1 become effective June 9, 1999.

VI. Cost Benefit Analysis

Form BDW is filed only one time by a registered broker-dealer. The amendments to Form BDW adopted today do not materially alter the disclosure required on Form BDW. As a result, the costs to broker-dealers of gathering the information necessary to complete a Form BDW will remain the same as those currently applicable under the present Form BDW.

The actual filing of the Form on Web CRD will result in savings of approximately 15 minutes per Form over the current paper filing system according to staff estimates.

In addition, the implementation of the amendments to Form BDW will facilitate the overall internet-based filing system of Web CRD covering Forms BD and BDW as well as U–4 and U–5. This internet-based filing system will provide ongoing efficiencies for filers, regulators, and the public through reductions in the time required for filing and accessing filed information.

VII. Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act [26] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purpose of the Exchange Act. Moreover, Section 3 of the Exchange Act as amended by the National Securities Markets Improvement Act of 1996 provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The Commission is of the view that the amendments to Form BDW, and the amendments to Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1, and 15Cc1–1 under the Exchange Act [27] would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, the form revisions and rule amendments adopted today will reduce the regulatory burden on broker-dealers by clarifying the information required to be filed on Form BDW and by facilitating the filing of Form BDW electronically with the CRD.

VIII. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the adoption of the amendments would not have a significant economic impact on a substantial number of small entities.[28] This certification, including the reasons therefor, is attached to this release as Appendix A.

IX. Paperwork Reduction Act Analysis

Certain of the amendments to Form BDW contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 *et seq.*) (''PRA''). The Commission submitted the proposal to the Office of Management and Budget (''OMB'') for review in accordance with PRA requirements in effect at the time the amendments were proposed. The title for this collection of information is: ''Form BDW.'' OMB has approved the amendments to Form BDW and has assigned Form BDW OMB Number

[20] 17 CFR 240.15Bc3–1.

[21] 17 CFR 240.15Cc1–1.

[22] 17 CFR 240.15b1–1.

[23] 15 U.S.C. 78o(b).

[24] 17 CFR 240.15b1–1, 17 CFR 240.15b3–1, 17 CFR 240.15b6–1, 17 CFR 240.15Ba2–2, 17 CFR 240.15Bc3–1, and 17 CFR 240.15Cc1–1.

[25] 15 U.S.C. 78o(b), 78o–4(c), 78o–5(c), 78q(a), 78r(a), and 78ff(a).

[26] 15 U.S.C. 78w(a)(2).

[27] 17 CFR 240.15b1–1, 17 CFR 240.15b3–1, 17 CFR 240.15b6–1, 17 CFR 240.15Ba2–2, 17 CFR 240.15Bc3–1, 17 CFR 240.15Ca1–1, and 17 CFR 240.15Cc1–1.

[28] Under the Exchange Act, a small broker or dealer entity is defined as ''a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year as of which its audited statements were prepared pursuant to 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter) and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.'' 17 CFR 240.010(c).

3235–0018, with an expiration date of October 31, 1999.

The Commission solicited public comment on the collection of information requirements contained in the Proposing Release. No comments were received.

The amendments to Form BDW are designed to reduce the regulatory burden on broker-dealers and to improve the usefulness of the information to federal and state securities regulators by simplifying the form and clarifying its requirements. The amendments are also designed to implement changes to the CRD system, including providing for electronic filing of Form BDW.[29]

This collection of information will be used by the Commission to determine whether it is in the public interest to permit a broker-dealer to withdraw its registration. This collection of information is also important to a withdrawing broker-dealer's customers and to the general public because it provides, among other things, the name and address of the broker-dealer's agent to contact regarding the broker-dealer's unfinished business.

The likely respondents to the proposed collection of information will be the 900 or fewer broker-dealers that withdraw from registration annually. They will be required to respond to the proposed collection of information before being allowed to withdraw their registration with the Commission. The Commission expects that the proposed collection of information on revised Form BDW will result in no additional burdens to broker-dealers seeking to withdraw from registration on Form BDW. The Commission estimates that the average burden to complete Form BDW will be approximately 15 minutes, or 0.25 hours. (based on the Commission staff's experience in administering the form). Approximately 900 respondents file one response per year, resulting in an estimated total annual reporting burden of 225 hours.

As adopted, respondents will be required to retain the collection of information for a period of no less than six years and to make it available for inspection upon a regulatory request. Disclosure of data solicited in this collection of information by the respondents is mandatory before a request for withdrawal from registration may become effective. Disclosure of social security numbers, however, is voluntary. The responses provided by the respondents will be made a matter of public record and will be available for inspection by any member of the public.

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 control number.

X. Statutory Basis

The foregoing amendments are adopted pursuant to Sections 15(b), 15B, 15C and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.15b1–1 by revising paragraph (c) to read as follows:

§ 240.15b1–1 Application for registration of brokers or dealers.

* * * * *

(c) An application for registration that is filed with the Central Registration Depository pursuant to this section shall be considered a ''report'' filed with the Commission for purposes of Sections 15(b), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

3. By amending § 240.15b3–1 by revising paragraph (c) to read as follows:

§ 240.15b3–1 Amendments to application.

* * * * *

(c) Every amendment filed with the Central Registration Depository pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15(b), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

4. By revising § 240.15b6–1 to read as follows:

§ 240.15b6–1 Withdrawal from registration.

(a) Notice of withdrawal from registration as a broker or dealer pursuant to Section 15(b) of the Act shall be filed on Form BDW (17 CFR 249.501a) in accordance with the instructions contained therein. Every notice of withdrawal from registration as a broker or dealer shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements. Prior to filing a notice of withdrawal from registration on Form BDW (17 CFR 249.501a), a broker or dealer shall amend Form BD (17 CFR 249.501) in accordance with § 240.15b3–1(a) to update any inaccurate information.

(b) A notice of withdrawal from registration filed by a broker or dealer pursuant to Section 15(b) of the Act (15 U.S.C. 78o(b)) shall become effective for all matters (except as provided in this paragraph (b) and in paragraph (c) of this section) on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such broker or dealer consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15(b) of the Act (15 U.S.C. 78o(b)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such broker or dealer, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) With respect to a broker's or dealer's registration status as a member within the meaning of Section 3(a)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)) for purposes of the application of Sections 5, 6, and 7 (15 U.S.C. 78eee, 78fff, and 78fff–1) thereof to customer claims arising prior to the effective date of withdrawal pursuant to paragraph (b) of this section, the effective date of a

[29] Rules 15b6–1, 15Bc3–1, and 15Cc1–1 under the Exchange Act [17 CFR 240.15b6–1, 17 CFR 240.15B3–1, and 17 CFR 240.15Cc1–1] require broker-dealers to file a notice of withdrawal on Form BDW in accordance with the instructions contained therein.

broker's or dealer's withdrawal from registration pursuant to this paragraph (c) shall be six months after the effective date of withdrawal pursuant to paragraph (b) of this section or such shorter period of time as the Commission may determine.

(d) Every notice of withdrawal filed with the Central Registration Depository pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15(b), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

5. By amending § 240.15Ba2–2 by revising paragraph (d) to read as follows:

§ 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

(d) Every application or amendment filed with the Central Registration Depository pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15(b), 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78o–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

6. By revising § 240.15Bc3–1 to read as follows:

§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.

(a) Notice of withdrawal from registration as a municipal securities dealer pursuant to Section 15B(c) (15 U.S.C. 78o–4(c)) shall be filed on Form MSDW (17 CFR 249.1110), in the case of a municipal securities dealer which is a bank or a separately identifiable department or division of a bank, or Form BDW (17 CFR 249.501a), in the case of any other municipal securities dealer, in accordance with the instructions contained therein. Prior to filing a notice of withdrawal from registration on Form MSDW (17 CFR 249.1110) or Form BDW (17 CFR 249.501a), a municipal securities dealer shall amend Form MSD (17 CFR 249.1100) in accordance with § 240.15Ba2–1(b) or amend Form BD (17 CFR 249.501) in accordance with § 240.15Ba2–2(c) to update any inaccurate information.

(b) Every notice of withdrawal from registration as a municipal securities dealer that is filed on Form BDW (17 CFR 249.501a) shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements. Every notice of withdrawal on Form MSDW (17 CFR 249.1110) shall be filed with the Commission.

(c) A notice of withdrawal from registration filed by a municipal securities dealer pursuant to Section 15B(c) (15 U.S.C. 78o–4(c)) shall become effective for all matters on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such municipal securities dealer consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15B(c) (15 U.S.C. 78o–4(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such municipal securities dealer, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (c), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (c) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) Every notice of withdrawal filed with the Central Registration Depository pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

7. By amending § 240.15Ca1–1 by revising paragraph (c) to read as follows:

§ 240.15Ca1–1 Notice of government securities broker-dealer activities.

* * * * *

(c) Any notice required pursuant to this section shall be considered filed with the Commission if it is filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements.

8. By revising § 240.15Cc1–1 to read as follows:

§ 240.15Cc1–1 Withdrawal from registration of government securities brokers or government securities dealers.

(a) Notice of withdrawal from registration as a government securities broker or government securities dealer pursuant to Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) shall be filed on Form BDW (17 CFR 249.501a) in accordance with the instructions contained therein. Every notice of withdrawal from registration as a government securities broker or dealer shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements. Prior to filing a notice of withdrawal from registration on Form BDW (17 CFR 249.501a), a government securities broker or government securities dealer shall amend Form BD (17 CFR 249.501) in accordance with 17 CFR 400.5(a) to update any inaccurate information.

(b) A notice of withdrawal from registration filed by a government securities broker or government securities dealer shall become effective for all matters on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such government securities broker or government securities dealer consents or the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15C(c) (15 U.S.C. 78o–5(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of such government securities broker or government securities dealer, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) Every notice of withdrawal filed with the Central Registration Depository pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15(b), 15C(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78o–5(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

10. By revising Form BDW (referenced in § 249.501a) to read as follows:

Note: Form BDW does not and the amendments will not appear in the Code of Federal Regulations. Revised Form BDW is attached as an Appendix to this document.

Dated: April 30, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the U.S. Securities and Exchange Commission (''Commission''), hereby certify, pursuant to 5 U.S.C. § 605(b), that the proposed amendments to Form BDW and Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1, and 15Cc1–1 (''Rules'') under the Securities Exchange Act of 1934 (''Exchange Act'') would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendments would facilitate implementation of filing of Form BDW (the form on which broker-dealers request withdrawal from registration) via the internet as part of Web CRD. The Commission receives roughly 900 Forms BDW a year. The proposed amendments would also clarify certain provisions of Form BDW and its status as a report under the Exchange Act, as well as permit the Commission to delay, or broker-dealers to consent to delay, the effectiveness of a filed Form BDW. The proposed amendments should not materially affect the substance of the required disclosures or the filing and delivery obligations under Form BDW or the Rules. Consequently, no new preparation, printing, or distribution costs would be incurred. Finally, the proposed amendments would impose no new recordkeeping requirements or compliance burdens on small entities. Accordingly, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

Dated: April 30, 1999.

Arthur Levitt, Jr.,

Chairman.

Billing Code 8010–01–P

Form BDW

OMB APPROVAL	
OMB Number:	3235-0018
Expires:	October 31, 1999
Estimated average burden hours per form:	0.25

Uniform Request for Broker-Dealer Withdrawal

SEC 122 (4/1999)

FORM BDW INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Broker-Dealers must file Form BDW to withdraw their registration from the Securities and Exchange Commission ("SEC"), Self-Regulatory Organizations ("SROs"), and appropriate *jurisdictions*. These instructions apply to filing Form BDW electronically with the Central Registration Depository ("CRD"). Some *jurisdictions* may require a separate paper filing of Form BDW and/or additional filing requirements. Thus, the applicant should contact the appropriate *jurisdiction(s)* for specific filing requirements.
2. All questions must be answered and all fields requiring a response must be complete before the filing is accepted. If filing Form BDW on paper, enter "None" or "N/A" where appropriate.
3. File Form BDW with the CRD, operated by the NASD. Prior to filing Form BDW, amend Form BD to update any incomplete or inaccurate information.
4. A paper copy of this Form BDW (or a reproduction of this form printed off the CRD), with original manual signature(s), must be retained by the broker-dealer filing the Form BDW and be made available for inspection upon a regulatory request. A paper copy of the initial Form BD filing and amendments to Disclosure Reporting Pages (DRPs BD) also must be retained by the broker-dealer filing the Form BDW.

B. FULL WITHDRAWAL (terminates registration with the SEC, all SROs, and all *jurisdictions*):

1. Complete all items except Item 3.
2. If Item 5 is answered "yes," file with the CRD a paper copy of FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. For firms that do not file FOCUS Reports, file a statement of financial condition giving the type and amount of the firm's assets and liabilities and net worth. This information must reflect the finances of the firm no earlier than 10 days before this Form BDW is filed.

C. PARTIAL WITHDRAWAL (terminates registration with specific *jurisdictions* and SROs, but does not terminate registration with the SEC and at least one SRO and *jurisdiction*):

1. Complete all items.
2. Check with *jurisdiction(s)* where registered for additional filing requirements.

The CRD mailing address for questions and correspondence is:

NASAA/NASD Central Registration Depository
P.O. Box 9495
Gaithersburg, MD 20898-9495

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

The term **JURISDICTION** means a state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

The term **INVESTIGATION** includes: (a) grand jury investigations, (b) U.S. Securities and Exchange Commission investigations after the "Wells" notice has been given, (c) NASD Regulation, Inc. investigations after the "Wells" notice has been given or after a person associated with a member, as defined in The NASD By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action or, (d) formal investigations by other SROs or, (e) actions or procedures designated as *investigations* by *jurisdictions*. The term *investigation* does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

The term **INVESTMENT-RELATED** pertains to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

Federal Information Law and Requirements - SEC's Collection of Information:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 15, 15C, 17(a) and 23(a) of the Securities Exchange Act of 1934 authorize the Commission to collect the information on this Form from registrants. See 15 U.S.C. §§ 78o, 78o-5, 78q, and 78w. Filing of this Form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether it is in the public interest to permit a broker-dealer to withdraw its registration. The Form also is used by broker-dealers to advise certain self-regulatory organizations and all of the states that they want to withdraw from registration. The Commission and the National Association of Securities Dealers, Inc. maintain files of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the application facing page of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

FORM BDW (REV. 4/1999)

UNIFORM REQUEST FOR WITHDRAWAL FROM BROKER-DEALER REGISTRATION

OFFICIAL USE

WARNING: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT MAY CONSTITUTE CRIMINAL VIOLATIONS.

1. A. FULL NAME OF BROKER-DEALER (if sole proprietor, state last, first and middle name):
B. IRS Emp. Ident. No.:
C. NAME UNDER WHICH BUSINESS IS CONDUCTED, IF DIFFERENT:
D. FIRM CRD NO.:
E. SEC FILE NO.:
F. FIRM MAIN ADDRESS: NUMBER AND STREET CITY STATE/COUNTRY ZIP+4/POSTAL CODE
G. MAILING ADDRESS, IF DIFFERENT: NUMBER AND STREET CITY STATE/COUNTRY ZIP+4/POSTAL CODE
H. AREA CODE / TELEPHONE NO.:

2. Check One: ☐ Full Withdrawal (skip Item 3) ☐ Partial Withdrawal (Check box(es) where withdrawing in Item 3.)

3. SEC ☐ SECURITIES AND EXCHANGE COMMISSION (check only if intending to conduct an intrastate business)

SRO ☐ AMEX ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PCX ☐ OTHER *(specify)* _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

4. Date firm ceased business or withdrew registration request (for partial withdrawals, give the date ceased business in the *jurisdictions* checked in Item 3): MM / DD / YYYY

5. Does the broker-dealer owe any money or securities to any customer or broker-dealer? YES ☐ NO ☐

If partial withdrawal, indicate *jurisdiction(s)* from which you are withdrawing where you owe funds or securities to customers in such *jurisdiction(s)*: ☐ , ☐ , ☐ .

If full withdrawal, complete A-D below.

A. Number of customers owed funds or securities: ☐

B. Amount of money owed to: customers $ ☐ broker-dealers $ ☐

C. Market value of securities owed to: customers $ ☐ broker-dealers $ ☐

D. Describe arrangements made for payment:

If this is a full withdrawal and Item 5 is answered "yes," file with the CRD a FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. For firms that do not file FOCUS Reports, file a statement of financial condition giving the type and amount of the firm's assets and liabilities and net worth. The FOCUS Report and the statement of financial condition must reflect the finances of the firm no earlier than 10 days before this Form BDW is filed.

6. Is the broker-dealer now the subject of or named in any *investment-related:*

	YES	NO
• *investigation*	☐	☐
• consumer-initiated complaint	☐	☐
• private civil litigation	☐	☐

NOTE: Update any incomplete or inaccurate information contained in Item 11 of Form BD.

7. NAME AND ADDRESS OF THE PERSON WHO WILL HAVE CUSTODY OF BOOKS AND RECORDS:
AREA CODE / TELEPHONE NO.:
ADDRESS WHERE BOOKS AND RECORDS WILL BE LOCATED, IF DIFFERENT: NUMBER AND STREET CITY STATE/COUNTRY ZIP+4/POSTAL CODE

8. **EXECUTION:** The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, the broker-dealer, and that all information herein, including any attachments hereto, is accurate, complete, and current. The undersigned and broker-dealer further certify that all information previously submitted on Form BD is accurate and complete as of this date, and that the broker-dealer's books and records will be preserved and available for inspection as required by law.

Date (MM/DD/YYYY) _____ Name _____

By: Signature _____ Print Name and Title _____

Subscribed and sworn before me this _____ day of _____, Year _____ by _____ Notary Public

My Commission expires _____ County of _____ State of _____

[FR Doc. 99–11359 Filed 5–7–99; 8:45 am]
BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–41351; File No. S7–16–99]

RIN 3235–AH73

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing technical amendments to Form BD, the uniform broker-dealer registration form, and related rules under the Securities Exchange Act of 1934. The proposed amendments would modify the version of Form BD that was adopted in 1996 but never implemented. The primary purpose of the amendments is to aid the implementation of electronic filing in the new, Internet-based Central Registration Depository system. This computer system, which is operated by the National Association of Securities Dealers, Inc., maintains registration information regarding broker-dealers and their registered personnel. The formatting and technical changes proposed today are needed to accommodate the shift from the network-based architecture and proprietary software approach anticipated in the 1996 Central Registration Depository system to the new, Internet-based system.

DATES:omments must be submitted on or before June 9, 1999.

ADDRESSES: All comments concerning the rule proposal should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–16–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel or Barbara A. Stettner, Special Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission (''Commission'') is proposing technical amendments to Form BD, the uniform application for broker-dealer registration, and related rules under the Securities Exchange Act of 1934 (''Exchange Act'').[1] The proposed amendments would modify the version of Form BD that was adopted in 1996 but never implemented (''1996 Form BD'').[2] The amendments are necessary to accommodate the shift from the proposed network-based and proprietary software approach anticipated in the 1996 Central Registration Depository (''CRD'') system (''Redesigned CRD'') to ''Web CRD,'' the new, Internet-based CRD system. The CRD is operated and maintained by the National Association of Securities Dealers, Inc. (''NASD'')[3] and is used by the Commission,[4] self-regulatory organizations (''SROs''), and state securities regulators in connection with registering and licensing broker-dealers and their registered personnel. The 1996 Form BD amendments were based upon the electronic filing approach of the 1996 Redesigned CRD, which differs significantly from the electronic filing approach of Web CRD. Web CRD will replace the current CRD system (''Legacy CRD''), which was created in 1981 as a cooperative effort with the North American Securities Administrators Association (''NASAA''), in order to facilitate the ''one-stop'' filing process for broker-dealers and their associated persons.[5]

Web CRD's Internet-based system is expected to further streamline and lower the costs associated with the one-stop registration process for broker-dealers and their associated persons. It is also expected to provide the Commission, SROs, and state securities regulators with enhanced access to registrant disciplinary and disclosure information. Web CRD is scheduled to be operational beginning August 16, 1999.

The proposed amendments are the result of discussions between the Commission staff, NASAA's CRD Project Committee (formerly the CRD/Forms Revision Committee), the NASD, the New York Stock Exchange, Inc., and representatives from the securities industry.

II. Background

On January 12, 1995, the Commission proposed amendments to Form BD in order to respond to anticipated design updates (i.e., Redesigned CRD) being developed for the Legacy CRD system.[6] Redesigned CRD was a comprehensive project undertaken by the NASD involving the creation of proprietary software and a network-based architecture that would have allowed broker-dealers to electronically file with the CRD. This system would have required broker-dealers to obtain through a subscription agreement the software developed by the NASD as well as computer hardware that met minimum configuration requirements. Redesigned CRD was intended to enable broker-dealers and their associated persons to file Forms BD, BDW, U–4, and U–5[7] electronically through a direct link to the CRD.[8] On July 18, 1996, the Commission adopted the amendments to 1996 Form BD that were necessary to fully implement the new system. These amendments, which elicited more precise disclosure from applicants and reorganized disclosure items into related categories, were intended to

[1] 17 CFR 240.15b1–1; 17 CFR 249.501; 15 U.S.C. §§ 78a et seq.

[2] Securities Exchange Act Release No. 37431 (July 12, 1996), 61 FR 139 (July 18, 1996).

[3] For purposes of this release, the term ''NASD'' will be sued to encompass both the NASD and NASD Regulation, Inc. (''NASDR'') unless specified otherwise. The NASDR is the regulatory subsidiary of the NASD and is responsible for the operation of the CRD system.

[4] In 1992, the Commission joined the CRD system and adopted amendments to the broker-dealer registration process. Those amendments required, among other things, that all broker-dealers file Form BD with the Commission through the CRD. These changes were made as part of the Commission's ongoing effort to reduce the costs associated with broker-dealer registration. Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11 (Jan. 4, 1993).

[5] Applicants seeking broker-dealer registration with the Commission, the NASD, the Chicago Board Options Exchange (''CBOE''), and the various states currently file a single Form BD with the NASD. The NASD manually enters the information into the CRD system, which then makes the information available (electronically) to the Commission and the appropriate states for review. Applicants may also seek registration with SROs other than the NASD and the CBOE through Form BD, but they may also be required to submit a copy of the paper Form BD to those SROs that do not participate in the CRD system. The NASD anticipates more SROs to become full participants in Web CRD after the system is operational.

[6] Securities Exchange Act Release No. 35224 (Jan. 12, 1995); 60 FR 4040 (Jan. 19, 1995).

[7] Forms BD and BDW are joint forms used by the Commission, SROs, and the states. The forms are used, respectively, to register, and to terminate the registration of, broker-dealers. SROs and the states use Forms U–4 and U–5 to register, and terminate the registration of, associated persons of broker-dealers.

[8] The direct link with the CRD would have been accomplished through several methods, including computer-to-computer interface, network access, and standard dial-up access.

become effective with the implementation of Redesigned CRD.

At that time, the NASD expected to implement Redesigned CRD in September 1996. However, a test of the system that began in May 1996 revealed that the NASD's proprietary software needed additional changes. The NASD also determined that broker-dealers needed more time to prepare their internal operations and infrastructure to support electronic filings through Redesigned CRD. The NASD, therefore, delayed the implementation of Redesigned CRD. Because of this delay, on September 4, 1996, the Commission suspended the compliance date for the 1996 Form BD amendments.[9] Applicants seeking broker-dealer registration were instructed to continue filing the 1993 version of Form BD until Redesigned CRD was fully operational.

In February 1997, following a reassessment of the CRD technology, the NASD decided to abandon the network-based, Redesigned CRD system and proceed instead with the Internet-based, Web CRD system. Because the implementation of 1996 Form BD was tied to the Redesigned CRD system, the use of the Form was further delayed. Moreover, because Web CRD would take additional time to fully develop, the substantive disclosure questions adopted in the 1996 Form BD could not be implemented immediately. As a result, the Commission adopted ''Interim Form BD,'' effective March 16, 1998.[10] Interim Form BD requires registrants to file the same disclosure information called for by the 1996 Form BD amendments in a format that is compatible with the Legacy CRD system.[11] Thus, while Interim Form BD incorporated all of the substantive changes of the 1996 Form BD amendments relating to disclosure of disciplinary history, it did not incorporate the formatting changes adopted in connection with the electronic filing approach contemplated in Redesigned CRD. Interim Form BD remains in effect today.

Today's proposed amendments would adapt 1996 Form BD to Web CRD's Internet-based environment. Web CRD will be a secure Web-based system that applicants will access through the NASD's Web site[12] with significantly less difficulty and at lower costs than would have been possible under Redesigned CRD. Under Web CRD, a firm will need access to the Internet through an account with an Internet Service Provider (''ISP'')[13] (e.g., AmericaOnLine, MCI WorldCom, Microsoft Network) to submit filings electronically.[14]

Web CRD will streamline the registration process for broker-dealers, and help broker-dealers submit more complete and accurate filings. For example, Web CRD will employ completeness checks to alert firms when required information is missing. If a firm files a form containing incomplete information in a ''Mandatory Field,'' Web CRD will automatically reject the submission and prompt the firm to re-submit a completed form. Completeness checks should reduce costly registration delays resulting from deficient filings. Web CRD also categorizes disclosure information on the Disclosure Reporting Pages (''DRPs'') through the use of pull-down menus[15] that provide specific options (''Pick Lists''), as well as ''Text Boxes.'' Pick Lists are intended to elicit precise information about a registrant's disclosure history and to capture standardized responses when possible. Text Boxes are intended to provide applicants with the opportunity to fully describe the details of a disclosable event in their own words. The use of Pick Lists and Text Boxes is also expected to benefit regulators by streamlining the capture and display of data, which should enhance regulators' ability to use standardized and specialized computer searches. By giving regulators better access to information, Web CRD is expected to bolster the oversight of broker-dealers and their registered personnel.

The amendments to Form BD proposed today consist mainly of technical changes necessary to accommodate Web CRD's Internet environment. The proposed amendments are intended to elicit the same level of disclosure required by both the 1996 Form BD and the Interim Form BD, but require the information to be submitted in a different format than is required today. Other changes being proposed are intended to clarify the current Form, to update references, or to streamline the registration process. The amendments proposed to Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–2 are necessary to implement Web CRD.

III. Proposed Amendments to Form BD

The Commission is proposing to make technical and formatting amendments to 1996 Form BD, to its general filing instructions and terms, and to its Schedules DRP and E. These changes are necessary to accommodate Web CRD's Internet-based environment. The proposed amendments would correct oversights, replace outdated information, and clarify instructions. They would also replace Legacy CRD references with Web CRD references, establish certain information fields as ''read-only,''[16] and make conforming changes based on the reorganization of the NASD manual in 1996[17] throughout Form BD. One change proposed is intended to help eliminate incorrect succession filings by requiring broker-dealers to discuss these filings with CRD personnel prior to submission.[18] Another proposed amendment would make questions in the DRPs pertaining to sanctions consistent.[19]

As mentioned above, the Commission is also proposing amendments to 1996 Form BD's corresponding DRPs, which must be completed when an applicant answers ''Yes'' to one of the disclosure questions in Item 11 of proposed Form BD. The proposed DRPs are designed to correspond to DRPs that are proposed in

[9] Securities Exchange Act Release No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

[10] Securities Exchange Act Release No. 39677 (February 18, 1998), 63 FR 9413 (February 25, 1998).

[11] One of the principal goals of Redesigned CRD, and the 1996 amendments to Form BD, was to make certain information regarding broker-dealers and their associated persons, that is required to be reported on the applicable registration forms, more readily available to the public. Accordingly, pending the implementation of Web CRD, Interim Form BD incorporated the enhanced disclosure elicited by 1996 Form BD Question 11 into the existing Form BD Question 7. Interim Form BD Question 7, therefore, requests information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications, other relevant history, and the applicant's financial soundness. In order to make the disclosures more organized and complete, Question 7 is divided into broad categories: criminal, civil, regulatory, and financial.

[12] Broker-dealers will submit filings through the NASDR's Web site at <https://crd.nasdr.com/crdmain>.

[13] A broker-dealer would also need access to an Internet browser (e.g., Netscape, Internet Explorer) in order to submit filings over the Internet. Internet browsers typically are provided by the ISP or can be downloaded free of charge from the Internet.

[14] In contrast, Redesigned CRD would have required firms to obtain NASD-developed software under a subscription agreement as well as computer hardware that met certain minimum configuration requirements (which may have involved costly upgrades to existing hardware). Broker-dealers would also have incurred costs associated with on-line usage fees and reports derived from the Redesigned CRD system.

[15] Pull-down menus are used to select options that are not readily visible on the screen. Pull-down menus are used by clicking the mouse and holding it on the option selected. The other choices then appear in a menu (or list) format.

[16] Read only fields could not be altered by the applicants.

[17] See NASD Notice to Members 96–26.

[18] See discussion regarding Item 5 on Form BD in Appendix A.

[19] See discussion regarding Civil Judicial Action DRP, Part II, Question 13.C (Sanction Detail). Specifically, the proposed amendments would change Question 13.C to ask, among other things, whether any portion of a penalty assessed against the applicant was waived.

connection with Forms U–4 and U–5.[20] While there are more technical and formatting amendments proposed for the DRPs than for the main part of Form BD, the proposed amendments primarily involve restructuring and reformatting to facilitate electronic filing in the Web CRD environment. They are not intended to make substantive changes to the information requested, with the exception of Question 13 in the Civil Judicial DRP which would now require the applicant to indicate whether any portion of a penalty assessed against it was waived.

By way of background, the DRPs that accompanied the 1996 Form BD (''1996 DRPs'') elicited more detailed information about reportable events than previously elicited on DRPs. Regulators had indicated that they needed this additional detail in order to make informed licensing and registration decisions. Consistent with the overall approach taken in Redesigned CRD, the additional detail would have been entered into many discrete fields. While this approach was intended to provide all CRD users with maximum flexibility in making queries to and deriving customized reports from the system, it had unanticipated practical drawbacks. One significant drawback was the fragmentation of the information once it was retrieved from the system.[21] Another drawback was that the numerous data fields and data tables demanded substantial time to process queries, which in turn resulted in delays in system response and other impediments to system performance.

The DRPs proposed today would eliminate these practical problems through the use of improved formatting. For example, the proposed DRPs would reduce the number of data fields and add Text Boxes. These Text Boxes would not only accommodate Web CRD, but would also allow applicants to describe events in context. The proposed DRPs would also contain Pick Lists in certain discrete fields. Pick Lists should create more consistency in the data entered in those fields. In response to concerns that the categories enumerated in the Pick Lists might not completely or accurately describe an event, the category of ''Other'' would be included where applicable. Therefore, while the Pick Lists would elicit more precise information, in a large percentage of questions the availability of ''Other'' would continue to provide for flexibility in response to DRP questions.

In sum, regulators should be able to use Web CRD to more efficiently gather the information needed to make informed registration and licensing decisions. Web CRD should also help regulators to process registration-related filings more efficiently and effectively and significantly enhance their ability to use the system for regulatory purposes. Finally, Web CRD should make it easier for registrants to comply with their filing obligations.[22]

A detailed textual description of the proposed amendments to Form BD, its instructions and terms, Schedule E, and the DRPs (collectively, ''Appendix A'') is available on the Commission's Web site at http://www.sec.gov[23] or may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001; (202) 942–0073.[24] Form BD as proposed to be amended is attached as Appendix B to this document.

IV. Electronic Filing and Re-Filing

Web CRD is intended to expedite the electronic filing of registration and licensing information for broker-dealers and their associated persons. While initial applications for broker-dealer registration on Form BD would continue to be filed on paper, the proposed amendments provide that all subsequent amendments to the Form would be made electronically through Web CRD.[25] The proposed amendments would also require registered broker-dealers to electronically re-file certain information in Web CRD that is already filed in Legacy CRD. The key dates and events associated with the transition from Legacy CRD to Web CRD, including the proposed Web CRD filing and re-filing requirements for broker-dealer applicants and registered broker-dealers, are described below.

A. Key Dates

July 31, 1999 Through August 15, 1999

As the NASD transitions from Legacy CRD to Web CRD, there will be a two-week period beginning July 31, 1999 and ending August 15, 1999 (''System Transition Period''), during which neither system will process Form BD filings and amendments, or Form BDW filings. Initial filings of Form BD received during this period will be held until August 16, 1999 and then input into Web CRD by the NASD. Amendments to Form BD received by the CRD during this period will be returned with instructions to re-submit the amendments electronically after August 16, 1999. Forms BDW seeking withdrawal from registration with all jurisdictions that are received during this period would be held by the CRD until August 16, 1999, then input into Web CRD by the NASD. Forms BDW seeking withdrawal from registration with only some jurisdictions that are received by the CRD during this period will be returned with instructions to re-submit the filing electronically after August 16, 1999. During the System Transition Period, the NASD will also transfer certain information from Legacy CRD to Web CRD.[26]

August 1, 1999

It is anticipated that the proposed amendments to Form BD will become effective on August 1, 1999. Any filings submitted on Interim Form BD after July 31, 1999 will be returned by CRD.

August 16, 1999

It is anticipated that Web CRD will be operational on August 16, 1999. The requirements for broker-dealer applicants filing initial Form BD, for registered broker-dealers filing amendments to Form BD, or for currently registered broker-dealers re-filing certain information in Web CRD

[20] Release No. 34–41326 (April 22, 1999); File No. SR–NASD–98–96.

[21] The 1996 DRP data structure was designed to provide regulators with the ability to sort information and create reports using all of the discrete data fields. As a practical matter, however, the NASD determined that the numerous data fields would have resulted in the retrieval of information that was separated from its context.

[22] In addition, by providing for Internet access, Web CRD is expected to streamline the procedures to process and respond to requests from the public for information about particular broker-dealers and their associated persons.

[23] On the SEC Web site see ''Current SEC Rulemaking; Proposed Rules; Release No. 34–41351, File No. S7–16–99.''

[24] Appendix A will not be published in the **Federal Register.**

[25] The NASD expects, however, that all filings for both broker-dealers and their associated persons will eventually be submitted exclusively through electronic means.

[26] Since March 1998, the NASD has been converting the following broker-dealer information from Legacy CRD to Web CRD: Base information (i.e., the broker-dealer's general CRD record information including the broker-dealer's CRD number, name, Commission number, IRS number, NASD district assignment, CRD contact, and related telephone number), Registration Status, Current Address (main and mailing), Types of Business (e.g., municipal securities dealer, corporate debt securities broker), and Form U–6 Disclosure (e.g., Commission and NASD actions). This initial conversion was done to accommodate the NASD's Public Disclosure Program on the Internet. During the System Transition Period, the NASD will transfer any remaining data described above. In addition, it will convert the following information: Name Change History (i.e., old name, new name, effective date of change), Mass Transfer History (e.g., firm name and CRD number, pre- and post-merger, acquisition), and Branch Information (Schedule E).

on or after August 16, 1999, are described below.

B. Filings on or After August 16, 1999

1. Initial Filings of Form BD by Broker-Dealer Applicants

Under the proposed amendments, broker-dealer applicants would continue to obtain the paper version of Form BD from the Commission [27] or from the NASD.[28] They would also continue to mail the completed initial Form BD to the CRD, which would manually input the information into the Web CRD system. This manual process would allow the NASD to establish a base record of information on broker-dealer applicants as well as begin the process of establishing a unique Web CRD user account for each broker-dealer.

Before a broker-dealer could access Web CRD, it would first need to designate an ''account administrator.'' This person, who may be someone within the firm or a third-party,[29] would serve as the point-of-contact between the broker-dealer and Web CRD.[30] The NASD would establish a user account for the broker-dealer's account administrator and send a letter of confirmation to the broker-dealer containing the account administrator's user name and initial password. Among other things, the account administrator would be responsible for identifying any additional persons who would need access to Web CRD [31] to submit filings on the firm's behalf . Designated persons would then be given passwords and the authorization to use Web CRD as determined by the account administrator.

Each broker-dealer would have a separate, unique account with the NASD that would enable it to access its own records and file subsequent amendments to its Form BD in Web CRD. Once the CRD has established an account for a broker-dealer, it would manually input the information from the broker-dealer into Web CRD, and it would then disseminate the information to the Commission, SROs, and state securities regulators with which the broker-dealer is requesting registration. Thus, except for the establishment of an account and account administrator, the processing of the initial Form BD would not significantly differ from the filing procedures currently in place under Legacy CRD.

2. Re-Filing and Amendments to Form BD by Registered Broker-Dealers

The proposed amendments would also require registered broker-dealers to establish Web CRD accounts to accommodate both the transfer of existing Form BD information from Legacy CRD to Web CRD and the electronic filing of Form BD amendments in Web CRD. Beginning August 16, 1999, all Form BD amendments and re-filings would be submitted electronically through the NASD's Web site at https://crd.nasdr.com/crdmain.

Due to technical issues identified by the NASD, certain broker-dealer information currently contained in Legacy CRD will not be transferred by the NASD to Web CRD.[32] Therefore, beginning on August 16, 1999, broker-dealers would be required to re-file the following information: Item 11 Disclosure (Schedule DRP), Direct/Indirect Owners (Schedules A and B), Control/Financial Information (*i.e.*, direct owners, executive officers, and indirect owners), Industry Arrangements (*e.g.*, custodial arrangements, holding company status), and Affiliated Firms. The proposed amendments would require a registered broker-dealer to re-file this information when it files its first amendment in Web CRD but, in any event, no later than December 15, 1999.[33]

V. Other Proposed Amendments

The Commission is also proposing to amend Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act. Rules 15b3–1 and 15Ca2–1 both contain ''Temporary Filing Instructions'' for Form BD that are now outdated. The proposed amendments would delete the outdated instructions and add ''Temporary Re-Filing Instructions'' for Form BD to all three rules.

VI. Effective Date

The Commission anticipates that the proposed amendments to Form BD would become effective on August 1, 1999. Initial Forms BD that are completed and submitted to CRD during the System Transition Period would be accepted by the CRD and entered into Web CRD by the NASD beginning on August 16, 1999.[34] Any Form BD amendments submitted to Web CRD during the System Transition Period, however, would be returned with instructions to re-submit on or after August 16, 1999. Broker-dealers may have difficulty complying with the requirement in Exchange Act Rule 15b3–1 to promptly file amendments because (1) they will not be able to file amendments to their Form BDs during the System Transition Period, and (2) they must re-file certain information from their Forms BD in Web CRD at the same time they are required to file their first amendment in Web CRD. Therefore, the proposed amendments would provide that broker-dealers will be considered to have met this requirement if they file an amendment that should have been filed during the System Transition Period no later than September 14, 1999 (*i.e.*, 30 days from August 16, 1999).[35] In addition, during the period from August 16 to December 15, 1999, the staff of the Division of Market Regulation will not recommend

[27] Applicants can, and will continue to be able to, request Form BD from the Commission's Publications Office at (202) 942–4040 or from any of the Commission's Regional or District Offices listed at <http://www.sec.gov/asec/secaddr.htm>. In addition, Form BD will be available from the Commission's Web site at <http://www.sec.gov> (under ''Current SEC Rulemaking; Proposed Rules; Release No. 34–41351, File No. S7–16–99'').

[28] Form BD will also be available from the NASD's Publications Office at (301) 590–6201 or can be downloaded from NASD's Web site at <http://www.nasdr.com>.

[29] Broker-dealers would have the option to designate a third party (*e.g.*, a service bureau or clearing firm) as its account administrator. However, if a broker-dealer opts for a third-party account administrator, it must acknowledge that the broker-dealer is responsible for filings made by those designated persons on behalf of the firm.

[30] The NASD anticipates that information packages on how to establish a Web CRD user account would be made available concurrently with Form BD.

[31] The account administrator would be responsible for determining who would have access to Web CRD and could limit such access in any manner. For example, a person responsible for Form U–4 filings might not have access to Form BD on Web CRD. In addition, the account administrator could choose to allow read-only access to many individuals within the broker-dealer.

[32] Large portions of Form BD data are currently stored as text fields in Legacy CRD. It is not technology possible for the NASD to convert this data to the counterpart text fields of Web CRD.

[33] The December 15, 1999 date was chosen to ensure that re-filing would take place prior to the annual shutdown of CRD for renewals and to have the re-filing complete before the Year 2000.

[34] As already described in Section IV.A., Forms BDW seeking withdrawal from registration with all jurisdictions that are received during this period would be held by the CRD until August 16, 1999, then input into Web CRD by the NASD. Forms BDW seeking withdrawal from registration with only some jurisdictions that are received by the CRD during this period would be returned with instructions to re-submit the filing electronically after August 16, 1999. In addition, the NASD also would accept a paper-filed Form BDW seeking withdrawal from registration in all jurisdictions after August 16, 1999 if it was the first filing made by broker-dealer in the Web CRD system.

[35] The Commission has not defined with constitutes ''prompt'' filing for purposes of Rule 15B3–1 because whether a filing is deemed ''promptly filed'' needs to be determined on a facts-and-circumstances basis. Moreover, the concept of ''promptness'' changes with the evolution of technology. However, in no event would filing an amendment after 30 days be considered ''prompt'' at a time other than during the System Transition Period.

enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment was filed within 30 days from when the disclosable event occurred. In any event, however, all re-filings would have to be completed on or before December 15, 1999.

VII. Request for Comment

The Commission is soliciting comment on whether the changes to Form BD and the related rules described above will provide more meaningful information to the Commission and other securities regulators without increasing the regulatory burden on broker-dealers. In particular, the Commission requests comment on whether the restructuring of Form BD to accommodate Web CRD would create additional burdens on broker-dealers and whether the restructuring will result in ultimate cost savings to broker-dealers. The Commission is preliminarily of the view that the costs associated with filing in Web CRD are minimal and will ultimately decrease. The Commission is also preliminarily of the view that most broker-dealers either already have Internet access or would be able to obtain Internet access at a minimal cost. However, the Commission requests comment as to whether ''hardship exemptions,'' such as is provided for the Commission's EDGAR system would be appropriate for Web CRD.[36]

VIII. Cost Benefit Analysis

No statutory mandate directs the Commission to undertake a specific cost-benefit analysis of a rule. Instead, pursuant to Section 23(a)(2) of the Exchange Act, the Commission is directed to consider, among other matters, the impact any rule would have on competition. The Commission may not adopt a rule which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes that the benefits of Web CRD to the industry outweigh the costs associated with the one-time re-filing requirement[37] for registered broker-dealers. Based on discussions with industry representatives, the Commission expects that when Web CRD is fully implemented, it will minimize future regulatory burdens on broker-dealers for filing Form BD and related amendments. Specifically, postage, duplication costs, and staff time would be reduced by using the Internet to file Form BD amendments. The Commission estimates that broker-dealers filed approximately 15,350 Form BD amendments in Legacy CRD for fiscal year 1998. Industry representatives estimate that each amendment in Legacy CRD typically requires $.60 for duplication costs (*i.e.*, $.05 per page at approximately 12 pages), $180 for postage (*i.e.*, $12 × approximately 15 next-day mailings to the CRD, SROs, and relevant states), and $140 of staff time required to fill out the amendment to Form BD and submit it to the appropriate regulators (*i.e.*, 4 hours of staff time per amendment × an average compensation rate of $35 per hour). Thus, the total annual cost burden to the industry to amend Form BD in Legacy CRD is approximately $4,921,210 (*i.e.*, [$.60 + $180 + $140] × a yearly average of 15,350 amendments).

In contrast, industry representatives estimate that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments). Therefore, the Commission estimates that the annual cost burden to the industry to amend Form BD under Web CRD will be approximately $177,293 (*i.e.*, .33 hours × a yearly average of 15,350 amendments × an average compensation rate of $35 per hour).[38] This would result in a total annual cost savings of over $4.5 million for all broker-dealers amending Form BD.

Because the Form would still be filed initially on paper, the proposed amendments do not alter the current burden on initial filers of Form BD. In addition, the proposed amendments requiring broker-dealers to designate an account administrator and establish an ISP account are not expected to significantly alter the current burden on broker-dealers. As described above, the account administrator will be the point-of-contact between the broker-dealer and the CRD. According to industry representatives, the account administrator will most likely be the person who already performs filing and reporting functions for the firm (either internally or as a third-party filer). It is anticipated, therefore, that this person will continue to be the point-of-contact with the CRD and continue to perform similar reporting and administrative tasks for the firm. The Commission seeks comment, however, on any additional burden that will be placed on broker-dealers due to the requirement of designating an account administrator.

With respect to ISP accounts, the Commission is preliminarily of the view that the requirement that broker-dealers have Internet access (either internally or through a third-party filer) would not significantly alter the current burden on broker-dealers. Most broker-dealers already have Internet access and, for those that do not, the cost of obtaining an ISP account averages approximately $20 per month. In addition, many broker-dealers use the Internet for other business purposes such as sending and receiving e-mail, maintaining a Web site, or delivering documents. For these broker-dealers, the additional burden to file amendments to Form BD through the Internet would be only a fraction of their total costs associated with their use of the Internet. The Commission requests comment, however, on the percentage of brokers who do not currently have Internet access as well as the marginal costs associated with filing amendments to Form BD through an existing ISP account.

The Commission also preliminarily believes that Web CRD will benefit regulators and the public by streamlining the capture of relevant information pertaining to broker-dealers and their associated persons. Precise information regarding a broker-dealer's activities and disciplinary history is needed for investigations and examinations by regulators. It also is a valuable informational resource for investors in deciding whether to entrust their financial assets to a particular broker-dealer.[39] While it is impossible to quantify these benefits, the Commission believes that these benefits exceed the recordkeeping and reporting burden imposed on broker-dealers.

IX. Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act[40] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessarily

[36] See ''Temporary'' and ''Continuing'' Hardship Exemptions at 17 CFR 232.201 and 17 CFR 232.202, respectively.

[37] See discussion in Section XI (Paperwork Reduction Analysis) regarding the burden hours for the one-time re-filing of certain information on Form BD.

[38] Broker-dealers that employ third-party filers account for approximately 3,009 (See Footnote No. 44 *infra*) of the Form BD amendments (*i.e.*, an approximate cost burden of $34,754). See discussion in Section XI (Paperwork Reduction Act Analysis) regarding the cost burdens on these broker-dealers.

[39] The NASD receives approximately 525,000 inquiries each year from the public requesting information about broker-dealers or their associated persons.

[40] 15 U.S.C. 78w(a)(2).

or appropriate in furthering the purpose of the Exchange Act.

Moreover, Section 3 of the Exchange Act as amended by the National Securities Markets Improvement Act of 1996, provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission is preliminarily of the view that the proposed amendments to Form BD and the related rules under the Exchange Act would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, the form revisions proposed today will reduce the regulatory burden on broker-dealers by facilitating electronic filing over the Internet, a more efficient and cost-effective means for broker-dealers to meet their regulatory and reporting obligations. The Commission requests comment, however, on any competitive burdens that might result from adoption of the form revisions described in this release. In addition, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rules on the economy an annual basis. Commentators should provide empirical data to support their views.

X. Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), pursuant to the requirements of the Regulatory Flexibility Act,[41] regarding the proposed amendments to Form BD. The IRFA indicates that the proposed revisions are intended to respond to the shift from the network-based architecture and proprietary software approach anticipated in the 1996 CRD system to the Internet-based Web CRD. The adoption of the proposed revisions to Form BD not only will provide benefits to securities regulators in the retrieval of information, but will also ease the burden of registration by future registrants. The IRFA also indicates that, except for the one-time re-filing requirement on registered broker-dealers, the proposed revisions to Form BD will reduce aggregate cost and time burdens on broker-dealers who are required to file, or make amendments to, Form BD. The IRFA further indicates that because the proposed amendments generally are intended to lessen the burden of registration, small broker-dealers will be affected in the same manner as other registrants. Thus, exempting small broker-dealers from Form BD disclosures would be unwarranted.

The Commission requests comment, however, on whether there would be a significant economic impact on a substantial number of small entities that might result from adoption of the Form BD revisions described in this release.

A copy of the IRFA may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001; (202) 942–0073.

XI. Paperwork Reduction Act Analysis

Certain provisions of the proposal to amend Form BD contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 *et seq.*). The Commission has submitted the proposal to the Office of Management and Budget (''OMB'') for review in accordance with PRA requirements in effect at this time. The title for this collection of information: ''Application for Registration as a Broker or Dealer,'' which the Commission is proposing to amend, contains a currently approved collection of information under OMB control number 3235–0012. The information received by Form BD is mandatory and the responses are not kept confidential. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

The proposed amendments to Form BD are expected to provide securities regulators with better information about a registrant's disciplinary history by grouping disciplinary information into related categories and by customizing the corresponding DRPs used to disclose details of the registrant's disciplinary history. The proposed amendments also are intended to elicit more precise information about the business activities of broker-dealer applicants.[42]

As discussed above, the proposed amendments to Form BD respond to certain recommended changes to the CRD system that have led to its redesign as an Internet-based system. Web CRD is expected to be more useful to securities regulators. It will also allow broker-dealers to file amendments to Form BD and other uniform registration forms electronically. Because Web CRD is intended to operate in an electronic environment, paper amendments to Form BD will no longer be submitted by broker-dealers. Rather, broker-dealers will be able to access and update their respective Forms BD through the NASD's Web site.

This should result in cost-savings related to copying, postage, and staff time. Under Web CRD, broker-dealers will not have to obtain dedicated computer systems or proprietary software as would have been required under Redesigned CRD. Rather, a firm only needs access to the Internet and an Internet browser through an account with an ISP to submit filings electronically.

Broker-dealers already are required pursuant to Rule 15b1–1[[43] under the Exchange Act to file for registration on Form BD and, pursuant to Rule 15b3–1(b),[44] to promptly file an amendment to Form BD if any information contained therein becomes inaccurate. The proposed amendments are intended to adapt Form BD to Web CRD's Internet-based environment. Therefore, except for the one-time re-filing requirement, the proposed amendments to Form BD will not impose any significant additional recordkeeping, reporting or other compliance requirement on broker-dealers. Initial filings of Form BD will continue to be made on paper and the electronic filing of Form BD amendments is expected to reduce time and cost burdens on broker-dealers.

With respect to the one-time re-filing requirement, the Commission staff estimates (based on discussions with industry representatives) that the average time necessary to complete a re-filing will be as follows: (1) approximately 30 large firms (total capital of more than $500 billion) will require approximately 40 hours each to re-file, (2) approximately 170 medium firms (total capital between $499 billion and $20 million) will require approximately 24 hours each to re-file, and (3) approximately 6,640 small

[41] 5 U.S.C. 603 (1990).

[42] The Commission uses the information disclosed by applicants in Form BD to: (i) Determine whether broker-dealer applicants meet the standards for registration set forth in the provisions of the Exchange Act; (ii) develop and maintain a central information resource where members of the public may obtain relevant, current information about broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers, and where the Commission and other securities regulators may obtain information for investigatory purposes; and (iii) develop statistical information concerning broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers.

[43] 17 CFR 240.15b1–1.

[44] 17 CFR 240.15b3–1(b).

firms[45] (total capital below $20 million) will require approximately 2 hours each to re-file. Thus, the total burden hours for the re-filing of certain disclosure information into Web CRD is estimated as 18,560 hours [30 large firms × 40 (1,200) + 170 medium firms × 24 (4,080) + 6,640 small firms × 2 (13,280) = 18,560].

Broker-dealer applicants are also subject to Form BD's initial reporting obligation. Form BD is only submitted once and is updated by amendment (see discussion on Form BD amendments below). For fiscal year 1998, the Commission received approximately 790 Form BDs for an initial or successor application for registration as a broker-dealer, non-bank municipal securities dealer, or non-bank government securities broker-dealer (pursuant to Rules 15b1–1, 15b1–3, 15b1–4, 15Ba2–2(a), 15Ba2–4, 15Ba2–5, 15Ca2–1, 15Ca2–3, and 15Ca2–4). Although the time necessary to complete Form BD will vary depending on the nature and complexity of the applicant's securities business, Commission staff estimates that the average time necessary to complete the initial form is approximately 2.75 hours. Thus, the Commission estimates that total annual burden hours required for the initial filing of a Form BD is 2,173 hours (2.75 × 790). It is important to note that the proposed amendments do not alter the current burden on initial filers of Form BD because a Form BD filed for the first time is still required to be filed on paper.

Under Web CRD, all amendments to Form BD would be filed electronically. For fiscal year 1998, the Commission received approximately 15,350 amendments. Of these 15,350 amendments, approximately 3,009 were from broker-dealers that employ third-party filers.[46] Because these broker-dealers would incur cost burdens rather than hour burdens, they will be removed from the total annual hour burden calculation (see discussion regarding cost burdens on broker-dealers that employ third-party filers below). Therefore, for purposes of the annual hour burden calculation, the total annual number of amendments to Form BD would be 12,341 (*i.e.*, 15,350 total amendments—3,009 amendments filed by third-party filers). The staff estimates that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments).

Thus, the total annual burden hours for the filing of Form BD amendments is 4,073 hours (.33 hours × approximately 12,341 [15,350 − 3009] amendments per year).

The staff estimates that the total annual filing burden for Form BD and Form BD amendments is 6,246 hours (2,173 for initial filings of Form BD + 4,073 for amendments to Form BD). This is a reduction of approximately 1,030 total burden hours from the annual regulatory burden anticipated in Redesigned CRD. However, the total one-time re-filing burden would be approximately 18,560 hours. Accordingly, for the year when Web CRD is first implemented, the total hour burden will be approximately 24,806 hours.

The Commission also anticipates that the burden hours discussed above would apply similarly to broker-dealers who rely on third-party filers. Instead of incurring the cost of staff time, however, these broker-dealers would be billed by third-party filers at an average compensation rate of $35 per hour. Therefore, a small broker-dealer would pay a third-party filer $70 (2 hours for re-filing × $35 per hour) to comply with its one-time re-filing obligation. This would amount to a total, one-time cost burden of $58,100 ($70 × 1,660 small broker-dealers that employ third-party filers).

Broker-dealers that employ third-party filers to file amendments to Form BD would also incur a cost burden. As discussed above in Section VIII (Cost Benefit Analysis), the Commission estimates that approximately 15,350 amendments to Form BD are filed each year by broker-dealers. Of these 15,350 amendments, approximately 3,009 are from broker-dealers that employ third-party filers. The average time necessary to complete an amendment on Web CRD is estimated to be approximately 20 minutes. Therefore, the total annual cost burden to broker-dealers that employ third-party filers to file amendments to Form BD would be approximately $34,754 (*i.e.*, .33 hours × 3,009 amendments × an average compensation rate of $35 per hour). The staff estimates that the total annual cost burden to these broker-dealers for re-filing and amending Form BD is approximately $92,854 (*i.e.*, $58,100 + $34,754).

With respect to ISP accounts, the Commission is preliminarily of the view that most broker-dealers already have Internet access (either internally or through a third-party filer), which they currently use to send and receive e-mail, to maintain a Web site, or to deliver documents. Therefore, the use of their existing Internet accounts for filing in Web CRD would be incremental and would not significantly alter their current burden. As discussed above in Section VIII (Cost Benefit Analysis), for those broker-dealers that do not currently have access to the Internet, the cost burden of obtaining an ISP account is approximately $20 per month. The Commission preliminarily estimates that approximately 5% of all broker-dealers (approximately 425 broker-dealers) do not currently have access to the Internet either directly or through the use of a third-party filer. Therefore, the total annual cost burden for obtaining and maintaining an Internet account would be approximately $102,000 [$20 × 12 months × (.05 × 8500)].

Accordingly, for the year when Web CRD is first implemented, the total cost burden would be $194,854 (*i.e.*, $102,000 for ISP accounts + $92,854 for broker-dealers employing third-party filers to amend and re-file Form BD).

It is important to note that regardless of whether a broker-dealer employs a person internally or hires a third-party to file information in CRD, ultimately the same costs would apply. The Commission seeks comment, however, on the costs associated with third-party filers, and in particular, whether broker-dealers employing third-party filers would bear different cost burdens than their counterparts who file with CRD internally. In addition, the Commission requests comment on the total number of broker-dealers who employ third-party filers.

Pursuant to 44 USC 3506(c)(2)(B), the Commission solicits comments to —

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

[45] The Commission estimate that approximately 20% of the small broker-dealer population (*i.e.*, 1,660 [.20 × 8,300 small broker-dealer]) employ third parties to file information related to their respective Forms BD with the CRD. These broker-dealers would not incur an hour burden and, therefore, for purposes of the Paperwork Reduction Act, are removed from the hour-burden calculation for small broker-dealers (*i.e.*, 8,300 total small broker-dealers—1,660 small broker-dealers that employ third party filers = 6,640 small broker-dealers that would incur hour burdens). As discussed below, however, the 1,660 broker-dealers would incur a cost burden with respect to re-filing and Form BD amendments.

[46] Out of the approximate 15,350 amendments filed each year, approximately 15,043 are filed by small broker-dealer (*i.e.*, 8,300 small broker-dealers = 98% of the broker-dealer community; 15,350 × .98 = 15,043). As discussed in footnote 43, *supra*, approximately 1,660 (20%) of small broker-dealers employ third-party filers and, therefore, would be responsible for approximately 3,009 of the total annual amendments to Form BD (*i.e.*, 15,043 amendments by small broker-dealer community × .20 = 3,009 amendments).

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609 with reference to File No. S7–16–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full affect if OMB receives it within 30 days of publication.

XII. Statutory Basis

The foregoing amendments are being proposed pursuant to the Exchange Act and particularly to Sections 15(a), 15(b), 15B, 15C, and 23(a) therein.[47]

List of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.15b3–1 by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and adding paragraph (c) to read as follows:

§ 240.15b3–1 Amendments to application.

* * * * *

(c) *Temporary re-filing instructions.* (1) Every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered ''Yes,'' the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

3. By amending § 240.15Ba2–2 by adding paragraph (e) to read as follows:

§ 240.15Ba2–2. Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

(e) Temporary re-filing instructions. (1) Every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered ''Yes,'' the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (e)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

4. By amending § 240.15Ca2–1 by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and adding a new paragraph (c) to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

* * * * *

(c) Temporary re-filing instructions. (1) Every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered ''Yes,'' the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

[47] 15 U.S.C. 78o(a), 78o(b), 78o–4(a)(2), 78o–5(a)(2), and 78w(a).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

11. By revising Form BD (referenced in § 249.501) to read as set forth in Appendix B below:

Note: Form BD does not and the revisions will not appear in the Code of Federal Regulations. Revised Form BD is attached as Appendix B to this document.

Dated: April 30, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A and B to this document are available in the Commission's Public Reference Room and will be available on the Commission's Web site at www.sec.gov.

BILLING CODE 8010–01–P

Appendix B

Form BD

OMB APPROVAL	
OMB Number:	3235-0012
Expires:	TBD
Estimated average burden hours per:	
Response	2.75
Amendment	0.33

Uniform Application for Broker-Dealer Registration

SEC 1490 (x/1999)

FORM BD INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form BD is the Uniform Application for Broker-Dealer Registration. Broker-Dealers must file this form to register with the Securities and Exchange Commission, the *self-regulatory organizations*, and *jurisdictions* through the Central Registration Depository ("CRD") system, operated by the NASD.
2. **UPDATING** – By law, the *applicant* must promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason.
3. **CONTACT EMPLOYEE** – The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
4. **GOVERNMENT SECURITIES ACTIVITIES**
   - A. Broker-dealers registered or *applicants* applying for registration under Section 15(b) of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 2B.
   - B. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, answer "yes" to Item 2C if conducting only a government securities business.
   - C. Broker-dealers registered under Section 15(b) of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 2D.

NOTE: Broker-dealers registered under Section 15C may register under Section 15(b) by filing an amendment to Form BD and answering "yes" to Items 2A and 2D. By doing so, broker-dealer expressly consents to withdrawal of broker-dealer's registration under 15C of the Exchange Act.

5. **FEDERAL INFORMATION LAW AND REQUIREMENTS** – 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 control number. Section 15, 15c, 17(a) and 23(a) of the Exchange Act authorize the Commission to collect the information on this Form from registrants. See 15 U.S.C. §§78o, 78o-5, 78-q and 78w. Filing of this Form is mandatory; however the social security number information, which aids in identifying the *applicant*, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirement to engage in the securities business. The Form also is used by *applicants* to register as broker-dealers with certain *self-regulatory organizations* and all of the states. The Commission and the National Association of Securities Dealers, Inc. maintain the files of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on application facing page of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. This information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

B. PAPER FILING INSTRUCTIONS (FIRST TIME *APPLICANTS* FILING WITH CRD AND WITH SOME *JURISDICTIONS*)

1. **FORMAT**
   - A. A full paper Form BD is required when the *applicant* is filing with the CRD for the first time. In addition, some *jurisdictions* may require a separate paper filing of Form BD. The *applicant* should contact the appropriate *jurisdiction(s)* for specific filing requirements.
   - B. Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing.
   - C. Type all information.
   - D. Give the name of the broker-dealer and date on each page.
   - E. Use only the current version of Form BD and its Schedules or a reproduction of them.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP(BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). Attach a copy of the fully completed DRP(BD) or DRP(U-4) previously submitted. If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP(BD).
3. **SCHEDULES A, B AND C** – File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B. Individuals not required to file a Form U-4 (individual registration) with the CRD system who are listed on Schedules A, B, or C must attach page 2 of Form U-4. The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21. Signatures are not required.
4. **SCHEDULE D** – Schedule D provides additional space for explaining answers to Item 1C(2), and "yes" answers to Items 5, 7, 8, 9, 10, 12, and 13 of Form BD.

C. ELECTRONIC FILING INSTRUCTIONS (*APPLICANTS* / REGISTERED BROKER-DEALERS FILING AMENDMENTS WITH CRD)

1. **FORMAT**
   - A. Items 1-13 must be answered and all fields requiring a response must be completed before the filing will be accepted.
   - B. *Applicant* must complete the execution screen certifying that Form BD and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   - C. To amend information, *applicant* must update the appropriate Form BD screens.
   - D. A paper copy, with original manual signatures, of the initial Form BD filing and amendments to Disclosure Reporting Pages (DRPs BD) must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete the *control affiliate* name and CRD number of the *applicant's* appropriate DRP(BD). Details for the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the questions and complete all fields requiring a response on the *applicant's* appropriate DRP(BD) screen.

3. **DIRECT AND INDIRECT OWNERS** – Amend the Direct Owners and Executive Officers screen and the Indirect Owners screen when changes in ownership occur. *Control affiliates* that are individuals who are not required to file a Form U-4 (individual registration) with the CRD must complete page 2 of Form U-4 (i.e., submit/file the information elicited by the Personal Data, Residential History, and Employment and Personal History sections of that Form). The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21.

The CRD mailing address for questions and correspondence is:

NASAA/NASD CENTRAL REGISTRATION DEPOSITORY
P.O. BOX 9495
GAITHERSBURG, MD 20898-9495

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

1. **GENERAL**

APPLICANT – The broker-dealer applying on or amending this form.

CONTROL – The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

JURISDICTION – A state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

PERSON – An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION – Any national securities or commodities exchange or registered securities association, or registered clearing agency.

2. **FOR THE PURPOSE OF ITEM 5 AND SCHEDULE D**

SUCCESSOR – An unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a registered predecessor broker-dealer, who ceases its broker-dealer activities. [See Securities Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993)]

3. **FOR THE PURPOSE OF ITEM 11 AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)**

CONTROL AFFILIATE – A *person* named in Items 1A, 9 or in Schedules A, B or C as a control person or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the *applicant*, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

INVESTMENT OR INVESTMENT-RELATED – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

INVOLVED – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

FOREIGN FINANCIAL REGULATORY AUTHORITY – Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *investment* or *investment-related* activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

PROCEEDING – Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

CHARGED – Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

FELONY – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *felony* is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

MISDEMEANOR – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *misdemeanor* is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

FOUND – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

MINOR RULE VIOLATION – A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the U.S. Securities and Exchange Commission. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes).

ENJOINED – Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FORM BD PAGE 1 (Execution Page) (REV. x/1999)	UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION Date: _____ SEC File No.: 8- _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the *jurisdictions* and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of *applicant*:
   A. Full name of *applicant* (if sole proprietor, state last, first and middle name):
   _____
   B. IRS Empl. Ident. No.:
   _____
   C. (1) Name under which broker-dealer business primarily is conducted, if different from Item 1A.
   _____
   (2) List on Schedule D, Page 1, Section I any other name by which the firm conducts business and where it is used.
   D. If this filing makes a name change on behalf of the applicant, enter the new name and specify whether the name change is of the ☐ *applicant* name (1A) or ☐ business name (1C):
   Please check above. _____
   E. Firm main address: (Do not use a P.O. Box)
   _____
   (Number and Street) (City) (State/Country) (Zip+4/Postal Code)
   Branch offices or other business locations must be reported on Schedule E.
   F. Mailing address, if different:
   _____
   G. Business Telephone Number:
   _____ _____
   (Area Code) (Telephone Number)
   H. Contact Employee:
   _____ _____ _____
   (Name and Title) (Area Code) (Telephone Number)

EXECUTION:

For the purposes of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and *applicant* hereby certify that the *applicant* is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the *applicant* in said State(s), upon whom may be served any notice, process, or pleading in any action or *proceeding* against the *applicant* arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the *applicant* hereby consents that any such action or *proceeding* against the *applicant* may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if *applicant* were a resident in said State(s) and had lawfully been served with process in said State(s).

The *applicant* consents that service of any civil action brought by or notice of any *proceeding* before the Securities and Exchange Commission or any *self-regulatory organization* in connection with the *applicant's* broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the *applicant's* contact employee at the main address, or mailing address if different, given in Items 1E and 1F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said *applicant*. The undersigned and *applicant* represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and *applicant* further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____ _____
Date (MM/DD/YYYY) Name of Applicant

By: _____ _____
Signature Print Name and Title

Subscribed and sworn before me this _____ day of _____, _____ by _____
Year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle items being amended. Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM BD PAGE 2 (REV. x/1999)	*Applicant* Name: _____ Date: _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

2. Indicate by checking the appropriate box(es) each governmental authority, organization. or *jurisdiction* in which the *applicant* is registered or registering as a broker-dealer.

SECURITIES AND EXCHANGE COMMISSION

	YES	NO
☐ If *applicant* is registered or registering with the SEC, check here and answer Items 2A through 2D below.		
A. Is *applicant* registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934?	☐	☐
B. Is *applicant* registered or registering as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer?	☐	☐
C. Is *applicant* registered or registering solely as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934? *Do not answer "yes" to Item 2C if applicant answered "yes" to Item 2A or Item 2B.*	☐	☐
D. Is *applicant* ceasing its activities as a government securities broker or dealer?	☐	☐

If applicant answers "yes" to Items 2A and 2D, applicant expressly consents to the withdrawal of its registration as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934. See "Instructions."

SRO

☐ AMEX ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PCX ☐ OTHER *(specify)* _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

3. A. Indicate legal status of *applicant:*

☐ Corporation ☐ Sole Proprietorship ☐ Other *(specify)* _____
☐ Partnership ☐ Limited Liability Company

B. Month *applicant's* fiscal year ends: _____

C. If other than a sole proprietor, indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed):

State/Country of formation: _____ Date of formation: _____ (MM/DD/YYYY)

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these schedules must be provided on Schedule C.

4. If *applicant* is a sole proprietor, state full residence address and Social Security Number.

Social Security Number: ___ ___ ___ - ___ ___ - ___ ___ ___ ___

_____
(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

	YES	NO
5. Is *applicant* at the time of this filing *succeeding* to the business of a currently registered broker-dealer? *Do not report previous successions already reported on Form BD.* *If "Yes," contact CRD prior to submitting form; complete appropriate items on Schedule D, Page 1, Section III.*	☐	☐
6. Does *applicant* hold or maintain any funds or securities or provide clearing services for any other broker or dealer?	☐	☐
7. Does *applicant* refer or introduce customers to any other broker or dealer? *If "Yes," complete appropriate items on Schedule D, Page 1, Section IV.*	☐	☐

FORM BD PAGE 3 (REV. x/1999)	*Applicant* Name: _____ Date: _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

	YES	NO
8. Does *applicant* have any arrangement with any other *person,* firm, or organization under which:		
A. any books or records of *applicant* are kept or maintained by such other *person,* firm or organization?	☐	☐
B. accounts, funds, or securities of the *applicant* are held or maintained by such other *person,* firm, or organization?	☐	☐
C. accounts, funds, or securities of customers of the *applicant* are held or maintained by such other *person,* firm or organization?	☐	☐
For purposes of 8B and 8C, do not include a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).		
If "Yes" to any part of Item 8, complete appropriate items on Schedule D, Page 1, Section IV.		
9. Does any *person* not named in Item 1 or Schedules A, B, or C, directly or indirectly:		
A. *control* the management or policies of the *applicant* through agreement or otherwise?	☐	☐
B. wholly or partially finance the business of *applicant*?	☐	☐
Do not answer "yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; 2) credit extended in the ordinary course of business by suppliers, banks, and others; or 3) a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).		
If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV.		
10. A. Directly or indirectly, does *applicant control,* is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?	☐	☐
If "Yes" to Item 10A, complete appropriate items on Schedule D, Page 2, Section V.		
B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?	☐	☐
If "Yes" to Item 10B, complete appropriate items on Schedule D, Page 3, Section VI.		
11. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 11. Refer to the Explanation of Terms section of Form BD Instructions for explanations of italicized terms.		
CRIMINAL DISCLOSURE		
A. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony?*	☐	☐
(2) been *charged* with any *felony?*	☐	☐
B. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving:* investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(2) been *charged* with a *misdemeanor* specified in 11B(1)?	☐	☐
REGULATORY ACTION DISCLOSURE		
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on the *applicant* or a *control affiliate,* or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	☐	☐

FORM BD
PAGE 4
(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

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		YES	NO
REGULATORY ACTION DISCLOSURE	D. Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority:*		
	(1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	☐	☐
	(2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
	(3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
	(4) in the past ten years, entered an *order* against the *applicant or* a *control affiliate* in connection with an *investment-related* activity?	☐	☐
	(5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order,* prevented it from associating with an *investment-related* business or restricted its activities?	☐	☐
	E. Has any *self-regulatory organization* or commodities exchange ever:		
	(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
	(2) *found* the *applicant* or a *control affiliate* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?	☐	☐
	(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
	(4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	☐	☐
	F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	☐	☐
	G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 11C, D, or E?	☐	☐
CIVIL JUDICIAL DISCLOSURE	H. (1) Has any domestic or foreign court:		
	(a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	☐	☐
	(b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
	(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or *control affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
	(2) Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H(1)?	☐	☐
FINANCIAL DISCLOSURE	I. In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:		
	(1) has been the subject of a bankruptcy petition?	☐	☐
	(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	☐	☐
	J. Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant?*	☐	☐
	K. Does the *applicant* have any unsatisfied judgments or liens against it?	☐	☐

FORM BD PAGE 5 (REV. x/1999)	*Applicant* Name: _____ Date: _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

12. Check types of business engaged in (or to be engaged in, if not yet active) by *applicant*. Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.	
A. Exchange member engaged in exchange commission business other than floor activities	☐ EMC
B. Exchange member engaged in floor activities	☐ EMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D. Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E. Broker or dealer selling corporate debt securities	☐ BDD
F. Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G. Mutual fund underwriter or sponsor	☐ MFU
H. Mutual fund retailer	☐ MFR
I. 1. U.S. government securities dealer	☐ GSD
2. U.S. government securities broker	☐ GSB
J. Municipal securities dealer	☐ MSD
K. Municipal securities broker	☐ MSB
L. Broker or dealer selling variable life insurance or annuities	☐ VLA
M. Solicitor of time deposits in a financial institution	☐ SSL
N. Real estate syndicator	☐ RES
O. Broker or dealer selling oil and gas interests	☐ OGI
P. Put and call broker or dealer or option writer	☐ PCB
Q. Broker or dealer selling securities of only one issuer or associate issuers (other than mutual funds)	☐ BIA
R. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
S. Investment advisory services	☐ IAD
T. 1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ TAS
U. Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V. Trading securities for own account	☐ TRA
W. Private placements of securities	☐ PLA
X. Broker or dealer selling interests in mortgages or other receivables	☐ MRI
Y. Broker or dealer involved in a networking, kiosk or similar arrangement with a:	
1. bank, savings bank or association, or credit union	☐ BNA
2. insurance company or agency	☐ INA
Z. Other *(give details on Schedule D, Page 1, Section II)*	☐ OTH

	YES	NO
13. A. Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account?	☐	☐
B. Does *applicant* engage in any other non-securities business?	☐	☐
If "yes," describe each other business briefly on Schedule D, Page 1, Section II.		

Schedule A of FORM BD

DIRECT OWNERS AND EXECUTIVE OFFICERS

(Answer for Form BD Item 3)

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule A only in new applications to provide information on the **direct** owners and executive officers of the *applicant*. Use Schedule B in new applications to provide information on **indirect** owners. File all amendments on Schedule C. **Complete each column.**

2. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or functions;
   (b) in the case of an *applicant* that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the *applicant*, unless the *applicant* is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the *applicant*. For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (c) in the case of an *applicant* that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and
   (d) in the case of a trust that directly owns 5% or more of a class of a voting security of the *applicant*, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant's* capital, the trust and each trustee.
   (e) in the case of an *applicant* that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Are there any indirect owners of the *applicant* required to be reported on Schedule B? ☐ Yes ☐ No

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

6. Ownership codes are:
   NA – less than 5%
   A – 5% but less than 10%
   B – 10% but less than 25%
   C – 25% but less than 50%
   D – 50% but less than 75%
   E – 75% or more

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
			MM	YYYY			PR		

Schedule B of FORM BD

INDIRECT OWNERS

(Answer for Form BD Item 3)
(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule B only in new applications to provide information on the **indirect** owners of the *applicant*. Use Schedule A in new applications to provide information on **direct** owners. File all amendments on Schedule C. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:
   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;
   For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (b) in the case of an owner that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and
   (c) in the case of an owner that is a trust, the trust and each trustee.
   (d) in the case of an owner that is a Limited Liability Company ("LCC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter"I" if the owner is an individual.

5. Complete the "Status" column by entering status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

6. Ownership codes are: C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
				MM	YYYY			PR		

Schedule C of FORM BD

AMENDMENTS TO SCHEDULES A & B

(Amendments to answers for Form BD Item 3)

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schedules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the Type of Amendment ("Type of Amd.") column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are:
   NA – less than 5%
   A – 5% but less than 10%
   B – 10% but less than 25%
   C – 25% but less than 50%
   D – 50% but less than 75%
   E – 75% or more
   F – Other General Partners

4. **List below all changes to Schedule A: (DIRECT OWNERS AND EXECUTIVE OFFICERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
				MM	YYYY			PR		

5. **List below all changes to Schedule B: (INDIRECT OWNERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
					MM	YYYY			PR		

Schedule D of FORM BD

Page 1

(REV. x/19.19)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an ☐ INITIAL ☐ AMENDED detail filing for the Form BD items checked below:

SECTION I *Other Business Names*

(Check if applicable) ☐ Item 1C(2)

List each of the "other" names and the *jurisdiction(s)* in which they are used.

1. Name	*Jurisdiction*	2. Name	*Jurisdiction*
3. Name	*Jurisdiction*	4. Name	*Jurisdiction*

SECTION II *Other Business*

(Check one) ☐ Item 12Z ☐ Item 13B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Briefly describe any other business (ITEM 12Z); or any other non-securities business (ITEM 13B). Use reverse side of this sheet for additional comments if necessary.

SECTION III *Successions*

(Check if applicable) ☐ Item 5

Date of *Succession* MM / DD / YYYY	Name of Predecessor	
Firm CRD Number	IRS Employer Identification Number (if any)	SEC File Number (if any)

Briefly describe details of the *succession* including any assets or liabilities not assumed by the *successor*. Use reverse side of this sheet for additional comments if necessary.

SECTION IV *Introducing and Clearing Arrangements / Control Persons / Financings*

(Check one) ☐ Item 7 ☐ Item 8A ☐ Item 8B ☐ Item 8C ☐ Item 9A ☐ Item 9B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement or agreement, enter the effective date of the change.

Firm or Organization Name	CRD Number (if any)	
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY
Individual Name (if applicable) *(Last, First, Middle)*	CRD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Briefly describe the nature of reference or arrangement (ITEM 7 or ITEM 8); the nature of the *control* or agreement (ITEM 9A); or the method and amount of financing (ITEM 9B). Use reverse side of this sheet for additional comments if necessary.

Schedule D of FORM BD

Page 2

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

Use this Schedule D Page 2 to report details for Item 10A. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10A

☐ 10A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

SECTION V ***Complete this section for control issues relating to ITEM 10A only.***

The details supplied relate to:

1 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 3 organizations to report, complete additional Schedule D Page 2s.

Schedule D of FORM BD

Page 3

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

Use this Schedule D Page 3 to report details for Item 10B. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 3 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10B

☐ 10B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

SECTION VI ***Complete this section for control issues relating to ITEM 10B only.***

Provide the details for each organization or institution that *controls* the *applicant*, including each organization or institution in the *applicant's* chain of ownership. The details supplied relate to:

1

Financial Institution Name

CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2

Financial Institution Name

CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3

Financial Institution Name

CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

4

Financial Institution Name

CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 4 organizations/institutions to report, complete additional Schedule D Page 3s.

Schedule E of FORM BD

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

INSTRUCTIONS

General: Use this schedule to register or report branch offices or other business locations of the *applicant*. Repeat Items 1-12 for each branch office or other business location. Each item must be completed unless otherwise noted. Use additional copies of this schedule as necessary. If this branch office or other business location is using a name in connection with securities activities other than the *applicant's* name, such name must be reported under Item 1C(2) on Page 1 of this form.

Specific:

Item 1. Specify only one box. Check "Add" when a branch office or other business location is opened and the *applicant* is filing the initial notice, "Delete" when a branch office or other business location is closed, and "Amendment" to indicate any other change to previously filed information.

Item 2. CRD will assign this branch number when the *applicant* adds a branch office or other business location as discussed in Item 1 above. If known, complete this item for all deletions and amendments.

Item 3. The Billing Code is an alpha/numeric value consisting of up to eight characters. It is the responsibility of the firm to establish and maintain its own unique billing codes. This is not a required field.

Item 4. Complete this item for all entries. A physical location must be included; post office box designations alone are not sufficient.

Item 5. Complete this item only when the *applicant* changes the address of an existing branch office or other business location.

Item 6. If the branch office or other business location occupies or shares space on premises within a bank, savings bank or association, credit union, or other financial institution, enter the name of the institution in the space provided.

Item 7. Complete this item for all entries. Enter the name of the supervisor or registered representative in charge who is physically at this location.

Item 8. Provide the CRD number for the branch office supervisor named in Item 7.

Item 9. Complete this item for all entries. Provide the date that the branch office or other business location was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 10. Check "Yes" or "No" to denote whether the location will be an Office of Supervisory Jurisdiction (OSJ) as defined in NASD Rule 3010.

Item 11. Check "Yes" or "No" to denote whether the location is a business location that will operate pursuant to a written agreement or contract (other than an insuranc e agency agreement) with the main office and any one or more of the following will apply: the location (A) assumes liability for its own expenses or has its expenses paid by a party other than the *applicant*; (B) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (C) deems 5% or more of its total registered representatives to be "independent contractors" for tax purposes; or (D) engages in separate market making and/or underwriting activities.

Item 12. Check the appropriate box(es) if the branch or other business location is registering with the NASD or registering or reporting with a *jurisdiction*.

1. *Check only one box:*
   ☐ Add ☐ Delete ☐ Amendment
2. CRD Branch Number _____
3. Billing Code _____
4. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
6. _____ Institution Name (if applicable)
7. _____ Supervisor Name
8. _____ CRD Number of Supervisor
9. _____ Effective Date (MM/DD/YYYY)
10. OSJ ☐ Yes ☐ No
11. ☐ Yes ☐ No
    If Yes, indicate each Item 11 subset that applies:
    ☐ A ☐ B ☐ C ☐ D
12. ☐ NASD ☐ *Jurisdiction*

1. *Check only one box:*
   ☐ Add ☐ Delete ☐ Amendment
2. CRD Branch Number _____
3. Billing Code _____
4. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
6. _____ Institution Name (if applicable)
7. _____ Supervisor Name
8. _____ CRD Number of Supervisor
9. _____ Effective Date (MM/DD/YYYY)
10. OSJ ☐ Yes ☐ No
11. ☐ Yes ☐ No
    If Yes, indicate each Item 11 subset that applies:
    ☐ A ☐ B ☐ C ☐ D
12. ☐ NASD ☐ *Jurisdiction*

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Items 11A and 11B*** of Form BD;

Check ☑ item(s) being responded to:

11A In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- ☐ (2) been *charged* with any *felony*?

11B In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
- ☐ (2) been *charged* with a *misdemeanor* specified in 11B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be provided to the CRD if not previously submitted. Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliates*
- ☐ One or more *control affiliates*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the applicant or *control affiliate* exercise(d) control: Enter organization name, whether or not the organization was an *investment-related* business and the *applicant's* or *control affiliate's* position, title or relationship.

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

3. **Event Disclosure Detail** (Use this for both organizational and individual charges.)

   A. Date First Charged (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

   C. Did any of the Charge(s) within the Event involve a *Felony*? ☐ Yes ☐ No

   D. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final

   E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation:

4. **Disposition Disclosure Detail**: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial, etc.], B. Date, C. Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (The information must fit within the space provided.)

Rev. Form BD (x/1999)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Items 11C, 11D, 11E, 11F or 11G*** of Form BD;
Check ☑ item(s) being responded to:

11C Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:
- ☐ (1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) *found* the *applicant* or a *control affiliate* to have been involved in a violation of its regulations or statutes?
- ☐ (3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?
- ☐ (5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?

11D Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority*:
- ☐ (1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?
- ☐ (2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?
- ☐ (3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) in the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?
- ☐ (5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?

11E Has any *self-regulatory organization* or commodities exchange ever:
- ☐ (1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?
- ☐ (3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

11F ☐ Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

11G ☐ Is the *applicant* or a *control affiliate* now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11C, 11D, 11E, 11F or 11G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

☐ The *Applicant*

☐ *Applicant* and one or more *control affiliates*

☐ One or more *control affiliates*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. Regulatory Action initiated by:

☐ SEC ☐ Other Federal ☐ State ☐ SRO ☐ Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state or *SRO*)

2. Principal Sanction: (check appropriate item)

☐ Civil and Administrative Penalty(ies)/Fine(s)	☐ Disgorgement	☐ Restitution
☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other _____

Other Sanctions:

3. Date Initiated (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. *Control Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, regulatory action appealed to: (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved: (check appropriate item)

☐ Acceptance, Waiver & Consent (AWC) ☐ Decision & Order of Offer of Settlement ☐ Settled
☐ Consent ☐ Dismissed ☐ Stipulation and Consent
☐ Decision ☐ Order ☐ Vacated

11. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

12.

A. Were any of the following Sanctions Ordered? (Check all appropriate items):

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions Ordered:

C. Sanction detail: if suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against applicant or *control affiliate*, date paid and if any portion of penalty was waived:

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

Rev. Form BD (x/1999)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11H*** of Form BD;

Check ☑ item(s) being responded to:

11H(1) Has any domestic or foreign court:

- ☐ (a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?
- ☐ (b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?
- ☐ (c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or a *control affiliate* by a state or *foreign financial regulatory authority*?

11H(2) ☐ Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority*, *SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

2. Principal Relief Sought: (check appropriate item)

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

3. Filing Date of Court Action (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

4. Principal Product Type: (check appropriate item)

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

6. *Control Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil action. (The information must fit within the space provided.):

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other_____

12. Resolution Date (MM/DD/YYYY): [ ] ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

13. **Resolution Detail:**

A. Were any of the following Sanctions Ordered or Relief Granted? (Check appropriate items):

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ [ ] ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions:

_____
_____
_____

C. Sanction detail: if suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:

_____
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14. Provide a brief summary of circumstances related to action(s), allegation(s), disposition(s) and/or finding(s) disclosed above. (The information must fit within the space provided.):

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Rev. Form BD (x/1999)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Item 11I*** of Form BD;

Check ☑ item(s) being responded to:

11I In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

☐ (1) has been the subject of a bankruptcy petition?

☐ (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

☐ The *Applicant*

☐ *Applicant* and one or more *control affiliates*

☐ One or more *control affiliates*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

☐ Bankruptcy ☐ Declaration ☐ Receivership

☐ Compromise ☐ Liquidated ☐ Other _____

2. Action Date (MM/DD/YYYY): [ ] ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

(continued)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)

(continuation)

3. If the financial action relates to an organization over which the *applicant* or *control affiliate* exercise(d) *control*, enter Organization Name and the *applicant's* or *control affiliate's* position, title or relationship:

Was the Organization *investment-related?* ☐ Yes ☐ No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

5. Is action currently pending? ☐ Yes ☐ No

6. If not pending, provide Disposition Type: (check appropriate item)

☐ Direct Payment Procedure ☐ Dismissed ☐ Satisfied/Released
☐ Discharged ☐ Dissolved ☐ SIPA Trustee Appointed ☐ Other _____

7. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently Open? ☐ Yes ☐ No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

10. Provide details to any status/disposition. Include details as to creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

Rev. Form BD (x/1999)

BOND DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11J*** of Form BD;

Check ☑ item(s) being responded to:

11J ☐ Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF APPLICANT	APPLICANT CRD NUMBER

1. Firm Name: (Policy Holder)

2. Bonding Company Name:

3. Disposition Type: (check appropriate item)

☐ Denied ☐ Payout ☐ Revoked

4. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. If disposition resulted in Payout, list Payout Amount and Date Paid:

6. Summarize the details of circumstances leading to the necessity of the bonding company action: (The information must fit within the space provided.)

Rev. Form BD (x/1999)

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11K*** of Form BD;

Check ☑ item(s) being responded to:

11K ☐ Does the *applicant* have any unsatisfied judgments or liens against it?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF APPLICANT	APPLICANT CRD NUMBER

1. Judgment / Lien Amount:

2. Judgment / Lien Holder:

3. Judgment / Lien Type: (check appropriate item)
☐ Civil ☐ Default ☐ Tax

4. Date Filed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. Is Judgment/Lien outstanding? ☐ Yes ☐ No

If No, provide status date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

If No, how was matter resolved? (check appropriate item)
☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

7. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable). (The information must fit within the space provided.):

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S. 531/P.L. 106–26

To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

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9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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201–End	(869–034–00160–2)	13.00	July 1, 1998
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.