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June 17, 1999

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 2003 and 3570

RIN 0575–AC10

Community Facilities Grant Program

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), formerly the Rural Housing and Community Development Service, a successor agency to the Farmers Home Administration, amends its regulations for the Community Facilities Grant Program. The intended effect is to finalize the Community Facilities Grant (CFG) program regulations that enable RHS to provide essential community facilities. RHS is also clarifying and revising its processing procedures and requirements in order to provide better service to rural communities.

EFFECTIVE DATE: This rule is effective July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Senior Loan Specialist, Community Programs Division, Rural Housing Service, U.S. Department of Agriculture, Stop 3222, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3222, telephone (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Classification

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

Environmental Impact Statement

This rule has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It has been determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the 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

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0173, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not impose any new information or recordkeeping requirements from those approved by OMB.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.766 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Agency has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Background

On April 7, 1997, RHS published an interim final rule, 7 CFR part 3570, subpart B, in the **Federal Register** (62 FR 16465–16473) implementing the CFG program. This rule added a grant program to the direct and guaranteed programs the Agency currently offers. As with other RHS programs, the CFG program is available to associations, federally recognized Indian tribes, nonprofit corporations, and public bodies serving rural areas. Authority is under section 306(a) of the Consolidated Farm and Rural Development Act. The CFG program was created to promote rural development in poverty areas because Congress recognized that many rural poverty-stricken communities are not eligible for RHS direct or guaranteed Community Facilities (CF) loan programs and, therefore, have no access to assistance for essential community facilities such as health care, public safety, and fire protection services. Many rural communities have suffered such severe economic constraints for so long that they are unable to provide their residents with the basic services

needed to improve their quality of life. RHS CF programs assist poor rural communities with financial resources to develop or improve health care facilities, child care centers, schools, libraries, fire and rescue buildings and equipment, town halls, street improvements, and so on. When these basic services become available to residents, the community becomes stronger and better equipped to continue its economic and community development efforts.

The interim final rule provided that Federal funds cannot exceed 75 percent of the cost of the project. However, we have determined that CFG funds can be used for up to 75 percent of the cost of developing specific essential community facilities in rural areas despite the amount of other Federal funds participating in the project. Therefore, a limit on the overall Federal Government assistance was removed for the final rule. Additionally, section 735 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, temporarily changed the definition of the terms ''rural'' and ''rural area'' back to the definition in effect prior to April 4, 1996, for fiscal year 1999. For fiscal year 1999, any city or town with a population of 20,000 or less inhabitants is considered rural or in a rural area for the CF program. Also, for fiscal year 1999, there is no limitation placed on the population in open rural areas.

When RHS published the interim final rule, the Agency asked for comments on or before June 6, 1997. RHS received five written comments. The commentators were representatives from Rural Development staff and an Indian tribe. These comments were considered and were the basis of several changes in the final regulation.

Many administrative changes were made in the regulation, the grant agreement, and the forms administering the program. Some changes were made based on RHS's experience in operating the program. Major comments and other changes are noted below:

1. Since the objective of this program is to fund the minimum amount sufficient for feasibility, the regulation now requires that an applicant's available excess funds be used to supplement eligible project costs. RHS emphasizes the funding of smaller projects in the minimum amount to ensure feasibility and adequate operating reserves. The ''eligible applicant'' criteria were expanded to include applicants who do not have the authority to borrow funds, but own, operate, and maintain a facility such as a public body with limited funds and no taxing authority. Additionally, all applicants must own the facility if CFG funds are being used to purchase equipment or obtain or improve real property.

2. Section § 3570.62 has been expanded to delineate eligible purposes for CFG funds. In the interim final rule, applicants were referred to 7 CFR part 1942, subpart A, for eligible purposes. Employees from Federal Agencies requested this information be included in the final rule. For consistency, CF uses the same purposes for all its programs. For the CFG program, RHS has decided to emphasize the funding of smaller projects.

3. A commentator recommended the final rule be revised so that other lenders participating in a CFG project are not restricted to the interest rate they can charge when participating in a project. The Agency does not want CFG funds to subsidize high interest rates. However, the Agency has agreed to change the criteria to state that other lenders participating in the project can charge reasonable rates and terms. Reasonable rates and terms are those customarily charged public and nonprofit borrowers in similar circumstances in the ordinary course of business and are subject to Agency review.

4. Minor changes were made in the population criteria referred to in the grant assistance tiers. This is the result of the reduction in the rural population the Agency can serve in fiscal year 1999 and the Agency's desire to equalize the grant assistance tiers.

5. A number of comments were received requesting clarification on the grant closing process. The regulation was changed to reflect suggestions submitted by employees of Federal Agencies. The regulation was modified to not require loans and grants to close simultaneously. However, loan funds must be advanced before grant funds. The regulation has been changed to reflect these changes.

6. Community Facilities Grant Agreement. Several comments were received stating that this document does not identify or reference property acquired with grant funds or address how it will be disposed. Property acquired with CFG funds are subject to the use and disposition requirements of 7 CFR parts 3015, 3016, or 3019, as appropriate. The ''Community Facilities Grant Agreement'' was changed to reflect these modifications.

7. A comment from a Native American tribe requested a set-aside be established in this program for Indian Tribes. A set-aside was not established in the final rule because the Agency always prioritizes its funding of projects based on small communities with low median household incomes. By RHS focusing on low income and sparsely populated areas, this program assists Native Americans and other communities with special economic needs without setting aside funds for specific groups of populations.

List of Subjects

7 CFR Part 2003

Organizations and functions (Government agencies).

7 CFR Part 3570

Accounting, Administrative practice and procedure, Conflicts of interests, Environmental impact statements, Fair housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Rural areas, Subsidies.

Therefore, chapters XVIII and XXXV of title 7, Code of Federal Regulations, are amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for part 2003 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 6941; and 7 CFR 2.17.

Subpart A—Functional Organization of the Rural Development Mission Area

§ 2003.18 [Amended]

2. Section 2003.18(b)(5)(i) is amended by adding the words ''and grants'' after the word ''loans.''

3. Chapter XXXV, title 7, Code of Federal Regulations is revised to read as follows:

PART 3570—COMMUNITY PROGRAMS

4. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

5. Part 3570, subpart B is revised to read as follows:

Subpart B—Community Facilities Grant Program

Sec.

3570.51 General.
3570.52 Purpose.
3570.53 Definitions.
3570.54–3570.60 [Reserved]
3570.61 Eligibility for grant assistance.
3570.62 Use of grant funds.
3570.63 Grant limitations.
3570.64 Applications determined ineligible.
3570.65 Processing preapplications and applications.
3570.66 Determining the maximum grant assistance.
3570.67 Project selection priorities.
3570.68 Selection process.

3570.69 Environmental review, intergovernmental review, and public notification.
3570.70 Other considerations.
3570.71–3570.74 [Reserved]
3570.75 Grantee contracts.
3570.76 Planning, bidding, contracting, and construction.
3570.77–3570.79 [Reserved]
3570.80 Grant closing and delivery of funds.
3570.81–3570.82 [Reserved]
3570.83 Audits.
3570.84 Grant servicing.
3570.85 Programmatic changes.
3570.86 [Reserved]
3570.87 Grant suspension, termination, and cancellation.
3570.88 Management assistance.
3570.89 [Reserved]
3570.90 Exception authority.
3570.91 Regulations.
3570.92 [Reserved]
3570.93 Regional Commission grants.
3570.94–3570.99 [Reserved]
3570.100 OMB control number.

Subpart B—Community Facilities Grant Program

§ 3570.51 General.

(a) This subpart contains Rural Housing Service (RHS) policies and authorizations and establishes procedures for making essential Community Facilities Grants (CFG) authorized under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)).

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by federally recognized Indian tribes within a State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indian tribes must have equal opportunity along with other rural residents to participate in the benefits of this program.

(c) Federal statutes provide for extending RHS financial assistance without regard to race, color, religion, sex, national origin, age, disability, and marital or familial status. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington DC 20250, or call 1–800–245–6340 (voice) or (202) 730–1127 (TDD). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

(d) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates is subject to the provisions of 7 CFR part 1900, subpart D. Applications for assistance are required to identify any relationship or association with an RHS employee.

(e) Copies of all forms referenced in this subpart are available in the Agency's National Office or any Rural Development field office.

(f) An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. Grant funds may not be used to satisfy the judgment.

(g) Grants made under this subpart will be administered under, and are subject to, 7 CFR parts 3015, 3016, or 3019, as appropriate.

(h) The income data used to determine median household income must be that which accurately reflects the income of the population to be served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using income data from the most recent decennial Census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, this will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source.

(i) CFG funds can be used for up to 75 percent of the cost to develop the facility, notwithstanding that other contributions may be from other Federal sources.

§ 3570.52 Purpose.

The purpose of CFG program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in smaller communities with lower populations and lower median household incomes may receive a higher percentage of grant funds. The amount of CFG funds provided for a facility shall not exceed 75 percent of the cost of developing the facility.

§ 3570.53 Definitions.

Agency. The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, or a successor agency.

Approval official. An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

CF. Community Facilities.

CFG. Community Facilities Grant.

Essential community facilities. Those public improvements requisite to the beneficial and orderly development of a community that is operated on a nonprofit basis. (See § 3570.62(a)(1)). An essential community facility must:

(1) Serve a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks) unless it is a minor part of the total facility;

(4) Be within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

Facility. The physical structure financed by the Agency or the resulting service provided to rural residents.

Grantee. An entity with whom the Agency has entered into a grant agreement under this program.

Instructions. Agency internal procedures available in any Rural Development office and variously referred to as Rural Development Instructions, RD Instructions.

Minor part. No more than 15 percent of the total floor space of the proposed facility.

Nonprofit Corporations. Any corporation that is not organized or maintained for the making of a profit and that meets the eligibility requirements for RHS financial assistance in accordance with § 3570.61(a)(2).

Processing office. The office designated by the State program official to accept and process applications for CF projects.

Project cost. The cost of completing the proposed facility. (Facilities previously constructed will not be considered in determining project costs.) Total project cost will include only those costs eligible for CFG assistance.

Poverty line. The level of income for a family of four as defined by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Public body. Any State, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or federally recognized Indian tribe in rural areas.

Reasonable rates and terms. The rates and terms customarily charged public and nonprofit type borrowers in similar circumstances in the ordinary course of business and subject to Agency review.

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or a successor agency.

Rural and rural area. For fiscal year 1999, the terms ''rural'' and ''rural area'' include a city or town with a population of 20,000 or less inhabitants according to the latest decennial census of the United States. There is no limitation placed on population in open rural areas. After fiscal year 1999, the terms ''rural'' and ''rural area'' include a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Rural Development. A mission area within USDA which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

RUS. The Rural Utilities Service, an agency of USDA or a successor agency.

Service area. The area reasonably expected to be served by the facility.

State. The term ''State'' means each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

State Director. The term ''State Director'' means, with respect to a State, the Director of the Rural Development State Office.

State nonmetropolitan median household income. The median household income of all rural areas of a State as reported by the U.S. Census Bureau.

State strategic plan. A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

§§ 3570.54–3570.60 [Reserved]

§ 3570.61 Eligibility for grant assistance

The essential community facility must primarily serve rural areas, be located in a rural area, and the median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b)).

(a) *Eligible applicant.* An applicant must be a:

(1) Public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(2) Nonprofit corporation or association. Applicants, other than nonprofit utility applicants, must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies, or broadly based ownership and control by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(3) Federally recognized Indian tribe in a rural area.

(b) *Eligible facilities.* Essential community facilities must be:

(1) Located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas. In such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Necessary for orderly community development and consistent with the State Strategic Plan.

(c) *Credit elsewhere.* The approval official must determine that the applicant is unable to finance the proposed project from its own resources, or through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart. The applicant must certify to such status in writing.

(d) *Economic feasibility.* All projects financed under the provisions of this section must be based on satisfactory sources of revenues as outlined in 7 CFR 1942.17(h) and 1942.116. The amount of CFG assistance must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(e) *Legal authority and responsibility.* Each applicant must have, or will obtain, prior to the grant award, the legal authority necessary to own, construct, operate, and maintain the proposed facility. The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. If an applicant does not have the authority to borrow funds, but owns, operates, and maintains the facility, the applicant is eligible for CFG funds.

(f) *Facilities for public use.* All facilities shall be for the benefit of the public at large without discrimination as to race, color, religion, sex, national origin, disability, and marital or familial status.

§ 3570.62 Use of grant funds.

Grants of up to 75 percent of the cost of developing essential community facilities may be used to supplement financial assistance authorized in accordance with 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Eligible CFG purposes are those listed in paragraphs (a), (b), (c), and (d) of this section. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. CFGs may be used to:

(a) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses include facilities such as educational and other publicly owned facilities.

(1) ''Essential community facilities'' are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:

(i) Fire, rescue, and public safety;

(ii) Health services;

(iii) Community, social, or cultural services;

(iv) Transportation facilities such as streets, roads, and bridges;

(v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for RUS financing;

(vi) Telecommunications equipment as it relates to medical and educational telecommunications links;

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing;

(viii) Natural gas distribution systems; and

(ix) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including

access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(2) ''Otherwise improve'' includes, but is not limited to, the following:

(i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, necessary maintenance equipment, fire service equipment, X-ray machines) which will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(b) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) Pay the following expenses, but only when such expenses are a necessary part of a project to finance facilities authorized in paragraphs (a), (b), and (c) of this section:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(3) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(4) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(i) Compelling reasons exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) Contract documents have been approved by the Agency;

(iv) All environmental requirements applicable to the Agency and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the security property.

The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

§ 3570.63 Grant limitations.

(a) Grant funds may not be used to:

(1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);

(2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinance existing indebtedness;

(4) Pay interest;

(5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b)(1).

(6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b));

(7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;

(8) Pay an amount greater than 75 percent of the cost to develop the facility;

(9) Pay costs to construct facilities to be used for commercial rental unless it is a minor part of the total facility;

(10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies; and

(11) Pay for any purposes restricted by 7 CFR 1942.17(d)(2).

(b) Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of grant funds. Grant assistance is limited to the following percentages of eligible project costs:

(1) 75 percent when the proposed project is:

(i) Located in a rural community having a population of 5,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income.

(2) 55 percent when the proposed project is:

(i) Located in a rural community having a population of 12,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income.

(3) 35 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.

(4) 15 percent when the proposed project is:

(i) Located in a rural community having a population of 50,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State nonmetropolitan median household income.

(5) Grant assistance cannot exceed the applicable percentages contained in this section and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with § 3570.66.

§ 3570.64 Applications determined ineligible.

If, at any time, an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The applicant will be advised that it may appeal the decision. (See 7 CFR part 11.)

§ 3570.65 Processing preapplications and applications.

For combination proposals for loan and grant funds, only one preapplication package and one application package should be prepared

and submitted. Preapplications and applications for grants will be developed in accordance with applicable portions of 7 CFR 1942.2, 1942.104, and 3575.52.

(a) *Preapplications.* Applicants will file an original and one copy of ''Application for Federal Assistance (For Construction),'' with the appropriate Agency office. This form is available in all Agency offices. The preapplication and supporting documentation are used to determine applicant eligibility and priority for funding.

(1) All preapplications shall be accompanied by:

(i) Evidence of applicant's legal existence and authority; and

(ii) Appropriate clearinghouse agency comments.

(b) *Application processing.* Upon notification on ''Notice of Preapplication Review Action'' that the applicant is eligible for CFG funding, the applicant will be provided forms and instructions for filing a complete application. The forms required for a complete application, including the following, will be submitted to the processing office by the applicant:

(1) Updated ''Application for Federal Assistance (For Construction).''

(2) Financial feasibility report.

(c) *Discontinuing the processing of the application.* If the applicant fails to submit the application and related material by the date shown on ''Notice of Preapplication Review Action'' (normally 60 days from the date of this form), the Agency will discontinue consideration of the application.

§ 3570.66 Determining the maximum grant assistance.

(a) *Responsibility.* State Directors are responsible for determining the applicant's eligibility for grant assistance.

(b) *Maximum grant assistance.* Grant assistance cannot exceed the lower of:

(1) Qualifying percentage of eligible project cost determined in accordance with § 3570.63(b);

(2) Minimum amount sufficient to provide for economic feasibility as determined in accordance with § 3570.61(d); or

(3) Either 50 percent of the annual State allocation or $50,000, whichever is greater, unless an exception is made by the RHS Administrator in accordance with § 3570.90.

§ 3570.67 Project selection priorities.

Applications are scored on a priority basis. Points will be distributed as follows:

(a) *Population priorities.* The proposed project is located in a rural community having a population of:

(1) 5,000 or less—30 points;

(2) Between 5,001 and 12,000, inclusive—20 points;

(3) Between 12,001 and 20,000, inclusive—10 points; or

(4) Between 20,001 and 50,000, inclusive, when applicable—5 points.

(b) *Income priorities.* The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

(1) 60 percent of the State nonmetropolitan median household income—30 points;

(2) 70 percent of the State nonmetropolitan median household income—20 points;

(3) 80 percent of the State nonmetropolitan median household income—10 points; or

(4) 90 percent of the State nonmetropolitan median household income—5 points.

(c) *Other priorities.* Points will be assigned for one or more of the following initiatives:

(1) Project is consistent with, and is reflected in, the State Strategic Plan—10 points;

(2) Project is for health care—10 points; or

(3) Project is for public safety—10 points.

(d) *Discretionary*. (1) The State Director may assign up to 15 points to a project in addition to those that may be scored under paragraphs (a) through (c) of this section. These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will be awarded to projects benefiting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective.

(2) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds, emergency conditions caused by economic problems, natural disasters, or leveraging of funds.

Priority	Points
1	5
2	3
3	1

§ 3570.68 Selection process.

Each request for grant assistance will be carefully scored and prioritized to determine which projects should be selected for further development and funding.

(a) *Selection of applications for further processing.* The approval official will, subject to paragraph (b) of this section, authorize grants for those eligible preapplications with the highest priority score. When selecting projects, the following circumstances must be considered:

(1) Scoring of project and scores of other applications on hand;

(2) Funds available in the State allocation; and

(3) If other Community Facilities financial assistance is needed for the project, the availability of other funding sources.

(b) *Lower scoring projects*. (1) In cases when preliminary cost estimates indicate that an eligible, high-scoring application is not feasible, or would require grant assistance exceeding 50 percent of a State's current annual allocation, or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower-scoring application for further processing provided the high-scoring applicant is notified of this action and given an opportunity to review the proposal and resubmit it prior to selection of the next application.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with the applicant, may request an additional allocation of funds from the National office.

§ 3570.69 Environmental review, intergovernmental review, and public notification.

All grants awarded under this subpart, including grant-only awards, are subject to the environmental requirements of 7 CFR part 1940, subpart G, to the intergovernmental review requirements of RD Instruction 1940–J (available in any Rural Development office), and the public information process in 7 CFR 1942.17(j)(9).

§ 3570.70 Other considerations.

Each application must contain the comments, necessary certifications, and recommendations of appropriate Federal or State regulatory or other

agency or institution having expertise in the planning, operation, and management of similar facilities as required by 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Proposals for facilities financed in whole or in part with Agency funds will be coordinated with appropriate Federal, State, and local agencies as required by the following:

(a) Grants under this subpart are subject to the provisions of 7 CFR 1942.17(k) which include title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Americans with Disability Act of 1990, and the regulations issued thereto. Certain housing-related projects, such as nursing homes, group homes, or assisted-living facilities, must comply with the requirements of the Fair Housing Act.

(b) Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG and grantees. See 7 CFR part 3017 and RD Instruction 1940–M (available in any Rural Development office) for further guidance.

(c) Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 7 CFR part 3018.

(d) Civil Rights Impact Analysis, RD Instruction 2006–P (available in any Rural Development office), and ''Civil Rights Impact Analysis Certification.''

§§ 3570.71–3570.74 [Reserved]

§ 3570.75 Grantee contracts.

The requirements of 7 CFR 1942.4, 1942.17(e), 1942.17(l), 1942.118, and 1942.119 will be applicable when agreements between grantees and third parties are involved.

§ 3570.76 Planning, bidding, contracting, and construction.

Planning, bidding, contracting, and construction will be handled in accordance with 7 CFR 1942.9, 1942.18, and 1942.126.

§§ 3570.77–3570.79 [Reserved]

§ 3570.80 Grant closing and delivery of funds.

(a) ''Community Facilities Grant Agreement'' will be used as the grant agreement between the Agency and the grantee and will be signed by the grantee before grant funds are advanced.

(b) Approval officials may require applicants to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 7 CFR parts 3015, 3016, or 3019, as subsequently modified.

(c) Agency grant funds will be disbursed and monitored in accordance with 7 CFR 1942.17(p), 1942.123, and 1942.127.

(d) Grant funds will not be disbursed until they are actually needed by the applicant and all borrower, Agency, or other funds are expended, except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged,

(2) All interim funds have been disbursed, and

(3) Agency grant funds are needed before RHS or other loans can be closed.

(e) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

§ 3570.81–3570.82 [Reserved]

§ 3570.83 Audits.

(a) Audits will be conducted in accordance with 7 CFR 1942.17(q)(4), except as provided in this section.

(b) Grantees who are not required to submit an audit report will, within 60 days following the end of the fiscal year in which any grant funds were expended, furnish RHS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense report signed by an appropriate official of the organization or other documentation as determined appropriate by the approval official.

§ 3570.84 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O.

§ 3570.85 Programmatic changes.

The grantee shall obtain prior Agency approval for any change to the objectives of the approved project. (For construction projects, a material change in approved space utilization or functional layout shall be considered such a change.) Failure to obtain prior approval of changes to the approved project or budget may result in suspension, refund, or termination of grant funds.

§ 3570.86 [Reserved]

§ 3570.87 Grant suspension, termination, and cancellation.

Grants may be suspended or terminated for cause or convenience in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable.

§ 3570.88 Management assistance.

Grant recipients will be supervised to the extent necessary to ensure that facilities are constructed in accordance with approved plans and specifications and to ensure that funds are expended for approved purposes.

§ 3570.89 [Reserved]

§ 3570.90 Exception authority.

An RHS official may request, and the Administrator or designee may make, in individual cases, an exception to any requirement or provision of this subpart or address any omission of this subpart if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3570.91 Regulations.

Grants under this part will be in accordance with 7 CFR parts 3015, 3016, or 3019, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 7 CFR parts 3015, 3016, or 3019.

§ 3570.92 [Reserved]

§ 3570.93 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions (designated under Title V of the Public Works and Economic Development Act of 1965) for projects eligible for RHS assistance. RHS has agreed to administer such funds in a manner similar to administering RHS assistance.

(b) The transfer of funds from a Federal Regional Commission to RHS will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RHS and the Federal Regional Commission.

(c) The Appalachian Regional Commission (ARC) is authorized under the Appalachian Regional Development Act of 1965 to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by Rural Development. Therefore, a separate Project Management Agreement between RHS and ARC is not needed for each ARC grant.

(d) Grants by other Federal Regional Commissions are handled in accordance with a separate Project Management Agreement between the respective Federal Regional Commission and RHS for each Commission grant or class of grants administered by RHS.

(e) When the Agency has funds in the project, no charge will be made for

administering Federal Regional Commission grant funds.

(f) When RHS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act (31 U.S.C. 1535).

§§ 3570.94–3570.99 [Reserved]

§ 3570.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0173. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Dated: June 1, 1999.

Inga Smulkstys,

Deputy Under Secretary, Operations & Management, Rural Development.

[FR Doc. 99–15106 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–XV–U

FEDERAL ELECTION COMMISSION

11 CFR Part 9034

[Notice 1999–9]

Matching Credit Card and Debit Card Contributions in Presidential Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has adopted new regulations that allow contributions made by credit or debit card, including contributions made over the Internet, to be matched under the Presidential Primary Matching Payment Account Act. ''Matchable contributions'' are those which, when received by candidates who qualify for payments under the Presidential Primary Matching Payment Account Act, are matched by the Federal Government. The new rules provide that credit and debit card contributions, including those made over the Internet, are matchable to the extent provided by law, provided that controls and procedures are in place to detect excessive and prohibited contributions. Please note that further documentation requirements may be addressed in the Commission's upcoming final rules governing public financing of presidential primary and general election candidates.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c).

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is publishing today revisions to its regulations at 11 CFR 9034.2 and 9034.3 to permit the matching of credit card and debit card contributions, including contributions received over the Internet, under the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* (''Matching Payment Act''). Please note that other revisions to the Commission's rules concerning the public financing of presidential primary and general election campaigns will be addressed in a separate document. In addition, the Commission may address further documentation requirements of these new rules in that document.

Debit card contributions are deducted directly from the contributor's checking, savings, or other financial account. Credit card contributions are billed to the contributor and are usually processed by a third-party entity.

Under the Matching Payment Act, if a candidate for the presidential nomination of his or her party agrees to certain conditions and raises in excess of $5,000 in contributions of $250 or less from residents of each of at least 20 States, the first $250 of each eligible contribution is matched by the Federal Government. 26 U.S.C. 9033, 9034. In the past the Commission has declined to match credit card contributions, although it has allowed them in other contexts. The Commission has always held contributions submitted for matching to a higher documentation standard, because the matching fund program involves the disbursement of millions of dollars in taxpayer funds. However, the Commission has now determined that such contributions may be matched under certain circumstances.

On December 16, 1998, the Commission published a Notice of Proposed rulemaking (''NPRM'') in which it sought comments on a wide range of issues involved in the public financing of presidential primary and general election campaigns. 63 FR 69524 (Dec. 16, 1998). While the NPRM did not specifically seek comments on credit card and Internet contributions, it stated that the Commission would welcome comments on ''other aspects of the public financing process that could be addressed in these regulations.'' *Id.* at 69532.

In response to the NPRM, several commenters urged the Commission to match qualified contributions made by credit or debit card over the Internet. These commenters included America Online (''AOL''); Aristotle Publishing, Inc.; the Democratic National Committee (''DNC''); the Republican National Committee (''RNC''); and a joint comment by Lyn Utrecht and Eric Kleinfeld of Ryan, Phillips, Utrecht, & MacKinnon, and Patricia Fiori. In addition, the Commission held a public hearing on March 24, 1999, at which representatives of AOL, the DNC, the RNC, and Ms. Utrecht testified on this issue. After considering the comments, testimony and other relevant material, the Commission has decided to authorize the matching of such contributions under the circumstances described below.

It is well established that the Administrative Procedure Act (''APA'') requires only that an agency give notice which contains ''either the terms or substance of the proposed rule or a description of the subjects and issues involved.'' 5 U.S.C. 553(b)(3). Under the APA, the final rule must be a ''logical outgrowth'' of the proposed rule on which it solicited comments. *Chocolate Manufacturers Ass'n* v. *Block*, 755 F.2d 1098 (4th Cir. 1985).

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the Matching Payment Act controls the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Enforcement Fairness Act, Pubic Law 104–121, section 251, 110 Stat. 857, 869 (1996). Section 9039(c) of Title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Matching Payment Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on Friday, June 11, 1999.

Explanation and Justification

A matchable contribution for purposes of the Matching Fund Act is generally defined at 26 U.S.C. 9034(a) as ''a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address.'' The Commission's regulations at 11 CFR 9034.2(b) define the term *written instrument* to mean a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money

order; or any similar negotiable instrument.'' The written instrument must contain the full name and signature of the contributor(s), the amount and date of the contribution, and the mailing address of the contributor(s). 11 CFR 9034.2(c). The Commission's rules at 11 CFR 9034.3(c) state that ''a contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction'' is a non-matchable contribution.

All contributions received in connection with Federal elections are subject to the limitations and prohibitions of the Federal Election Campaign Act (''FECA'' or the ''Act''), 2 U.S.C. 431 *et seq.* The Act prohibits corporations, labor organizations and national banks from making any contribution in connection with a Federal election, 2 U.S.C. 441b(a). The Act also prohibits contributions by Federal contractors, 2 U.S.C. 441c, and by foreign nationals who are not permanent legal residents, 2 U.S.C. 441e. Contributions by persons whose contributions are not prohibited by the Act are subject to the limits set out in 2 U.S.C. 441a(a), generally $1,000 per candidate per election to Federal office. 2 U.S.C. 441a(a)(1). Individual contributions to candidates and political committees may not aggregate more than $25,000 in any calendar year. 2 U.S.C. 441a(a)(3).

The Commission considered the possibility of matching credit card contributions in 1983 but declined to match such payments ''because credit cards present problems for ensuring that the requirements of matchability are met.'' 48 FR 5224, 5228 (Feb. 4, 1983). The Commission cited as examples of such problems the fact that credit card contributions made by phone would lack the contributor's signature; determining the source of the funds used for the contributions could be complicated, since some accounts that appear to be personal are actually paid for by corporations; and candidates would be requesting more in matching funds than they receive in contributions, since credit card companies deduct varying amounts to pay for their services. *Id.*

The Commission has, however, authorized the use of credit cards for unmatched contributions since 1978. *See* Advisory Opinion (''AO'') 1978–68. It has also authorized corporations to reimburse their Political Action Committees (''PAC'') for service charges incurred by credit card contributions, AO 1984–45; automatic fund transfers from contributors' bank accounts to committee accounts, AO 1989–26; contributions and membership dues to be paid to a PAC via credit card, AO 1990–4; and campaigns to solicit contributions to be made by advance authorization of credit card charges, AO 1991–1.

In AO 1978–68 the Commission assumed that credit card issuers would follow their usual and normal collection procedures with respect to obtaining payment from persons who used their cards to make political contributions; and that credit card issuers, as well as the companies processing the credit card charges, would render their services in the ordinary course of business and receive the usual and normal charge for their services, i.e., the prevailing charge for the services at the time they were rendered. *See* 11 CFR 100.4(a)(1)(iii)(B). Otherwise, the difference would constitute an in-kind corporate contribution in violation of 2 U.S.C. 441b. The Commission is making the same assumptions for purposes of this rulemaking.

The Commission is making this change for several reasons. The use of credit cards has expanded dramatically since this issue was last considered in 1983. The Commission is convinced that credit and debit card contributions present no greater danger of fraud than do other contributions, if adequate precautions are taken. This approach also allows matching contributions to be made over the Internet, consistent with the Commission's expressed interest in utilizing this evolving medium where appropriate in FECA and public funding contexts.

Contributions Made Over the Internet—Background

The Commission has interpreted its regulations to be consistent with contemporary technological innovations where the use of the technology would not compromise the intent of law. However, the Commission believes that additional precautions must be taken when credit and debit card contributions are made over the Internet, because there is no direct paper transfer involved in such transactions. In contrast, if a credit card contribution is solicited over the telephone, the person taking the information can inform the contributor directly of the Act's limits and prohibitions, and check any potentially troublesome information, such as a foreign residential address. Where contributions are solicited by mail or other printed material, the recipient has a written document setting out the Act's requirements and prohibitions for permanent reference.

In AO 1995–9, the Commission authorized political contributions to be made via credit card over the Internet, provided that safeguards were in place to screen out excessive and prohibited contributions. It subsequently authorized the *solicitation* of matchable contributions over the Internet, in AO 1995–35. However, the requester of that AO sought permission only to solicit funds over the Internet—contributors were asked to mail the resulting contributions to the campaign in the form of personal checks. Those who commented on the current NPRM asked the Commission to match contributions that are both solicited and paid for by credit card over the Internet, thus eliminating this middle step.

On March 18, 1999, the Commission received Advisory Opinion Request 1999–9, which sought to accomplish this same result through the AO process. The Commission approved that request on June 10, 1999, but made its approval contingent on final promulgation of the regulations following the Congressional review period.

The Commission has determined in these advisory opinions that certain conditions and procedures are sufficient to allay concerns over the receipt of prohibited contributions using credit cards, and to meet other FECA requirements. While the Commission is not mandating any particular language or procedures for this purpose, it notes that the following measures constitute ''safe harbors'' which have already been deemed satisfactory. Additional information on this topic will be included in the Commission's Guideline for Presentation in Good Order (''PIGO''), which is made available to all candidates who qualify for funding under the Matching Payment Act, as well as to other interested parties. *See* 11 CFR 9033.1(b)(9).

Section 9034.2(b) The ''Written Instrument'' Requirement

The Commission is amending paragraph (b) of section 9034.2 to clarify the meaning of the term *written instrument* in the context of contributions by credit or debit card. Consistent with the *Black's Law Dictionary* definition discussed below, the new rule specifically states that this term covers either a transaction slip or other writing signed by the cardholder, or in the case of such a contribution made over the Internet, an electronic record of the transaction created and transmitted by the cardholder, and including the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form by the

recipient candidate or candidate's committee.

Black's Law Dictionary defines *written instrument* as ''[s]omething reduced to writing as a means of evidence, and as the means of giving formal expression to some act or contract'' (6th Ed., 1990, at 1612). Clearly this would cover credit card transactions that were ''reduced to writing'' at some stage of the process. In fact, there is a small but growing body of case law holding that computer records also constitute written instruments, as long as they can be printed out in paper form. *Clyburn* v. *Allstate Insurance Co.*, 826 F.Supp. 955, 956 (D.S.C. 1993); *People* v. *Perry*, 605 N.Y.S.2d 790, 199 A.D.2d 889 (1993); *Colonial Dodge, Inc.* v. *Chrysler Corporation*, 11 F.Supp.3d 737, 750–51 (D.Md. 1996); *see also People* v. *LeGrand*, 439 N.Y.S.2d 695, 81 A.D.2d 945 (1981) (credit card vouchers and receipts held to be ''written instruments'' for purposes of state forgery statute).

While the use of the Internet for campaign contributions does not entail a ''written instrument'' in the traditional sense, this does not foreclose its use for this purpose. The Commission stated in AO 1995–9 that, in order to be valid under the FECA, electronic transactions of this nature must entail the creation and maintenance of a complete and reliable ''paper trail'' for recordkeeping, disclosure, and audit purposes. The campaign can then print out these forms as required. Please note that the Commission is not requiring campaigns to print out these records at the time they are received, but only that they be kept in a form which will allow them to be printed out as needed.

Section 9034.2(c) Definition of Signature

The Commission is revising paragraph (c) of section 9034.2 to clarify that the term signature means, in the case of a contribution by a credit or debit card, either an actual signature by the cardholder who is the donor on a transaction slip or other writing, or in the case of such a contribution made over the Internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder.

The Commission does not believe that the term *signature* can be extended to telephone transactions where the only record is being created wholly by the recipient committee. While the use of electronic signatures is becoming increasingly common, it is universally understood that it is the signatory's (in this case, the donor's) act of entering his or her name that represents a legal act. However, if the committee sends out a voucher and receives a contributor-signed return of the voucher, or obtains some other verification of the contribution from the contributor, the credit card contribution initially approved over the telephone could then be matched.

Section 9034.2(c)(8) Credit and Debit Card Contributions, Including Those Made Over the Internet

Section 9034.2(c)(8)(i) General Requirement

This section establishes the requirements for matching credit and debit card contributions, including those received over the Internet. It generally states at paragraph (c)(8)(i) that such contributions are matchable, provided that the requirements of 11 CFR 9034.2(b) concerning a written instrument and of 11 CFR 9034.2(c) concerning a signature are satisfied. As explained above, it excludes telephone transactions where the only record is being created wholly by the recipient committee.

Section 9034.2(c)(8)(ii) Prohibited Contributions

The new rules state at paragraph (c)(8)(ii) that credit card and debit card contributions will be matched, if evidence is submitted by the committee that the contributor has affirmed that the contribution is from personal funds and not from funds otherwise prohibited by law.

In order to comply with this provision, a committee should take steps to insure that controls and procedures are in place to minimize the possibility of contributions by foreign nationals, by Federal Government contractors, and by labor organizations, or by an individual using corporate or other business entity credit accounts. Such controls and procedures should also help the recipient committee identify contributions made by the same individual using different or multiple credit card accounts; and contributions by two or more individuals who are each authorized to use the same account, but where the legal obligation to pay the account only extends to one (or more) of the card holders, and not to all of them.

In Advisory Opinion 1999–9 the requester outlined numerous steps and procedures that campaign intended to take to screen for prohibited and excessive contributions. In Advisory Opinion 1995–9 the Commission approved other specific procedures for this purpose. While these regulations do not mandate all of these procedures, campaigns are still required to make reasonable efforts to prevent receipt of prohibited or excessive contributions. In Advisory Opinion 1999–9, for instance, to screen further for corporate or business entity cards, the committee explained that it intended to take advantage of the fact that corporate or business entity credit cards are generally billed directly to the entity's offices, rather than to an individual's home. If the billing and residential addresses provided by the prospective donor were different, the committee's web site would display a message noting the discrepancy and reminding the donor that it cannot accept contributions made on corporate or business entity credit cards, or on any card that does not represent the contributor's own personal funds. It was noted at the Commission's public hearing that similar action could be taken in an effort to bar prohibited contributions from foreign nationals, if the residence address was outside the United States. However, the rules do not prescribe particular language and procedures to assure that these concerns are met.

If contributions are not rejected for one of the foregoing reasons, soliciting campaigns present them for payment by the credit card company or other servicing entity in the usual manner. That entity will, in turn, ascertain that the name, address and other identifying information provided by the contributor matches that on record. If so, it will forward the amount of the contribution, less applicable fees, to the campaign. In the case of a debit card transaction, the financial institution that administers the account will forward the money to the campaign without this intermediate step. The receipt of the money by the campaign will serve as confirmation that the financial institution or other processing entity considers the transaction to be legal.

Section 9034.3(c) Non-Matchable Contributions

The Commission is revising section 9034.3(c) to delete from the definition of non-matchable contributions the term ''credit card transactions,'' because it has determined that credit card contributions may be matched under the circumstances set forth in this document.

Other Issues

Best Efforts

Treasurers of political committees are required to exercise ''best efforts'' to report all contributions, 2 U.S.C. 432(i), and to include in these reports the complete identification of each

contributor whose contributions aggregate more than $200 per calendar year. 2 U.S.C. 434(b)(3)(A). For an individual, ''identification'' means the full name, mailing address, occupation and employer. 2 U.S.C. 431(13). A contributor's failure to provide this information does not bar the recipient committee from accepting the contribution, since the FECA requires only that the committee make ''best efforts'' to obtain it. However, the Commission's rules at 11 CFR 104.7(b)(2) require the recipient to make one oral or written follow-up attempt to obtain the contributor information for any contribution that exceeds $200 per calendar year.

The Commission is not revising its ''best efforts'' regulations in this rulemaking because those rules apply to all categories of political committees, including presidential campaign committees that qualify for matching Federal payments under 26 U.S.C. 9031 *et seq.* Furthermore, Commission regulations impose additional documentation requirements for matchable contributions whether or not a presidential campaign has exerted ''best efforts'' to obtain the contributor information that it is required to report under 2 U.S.C. 434(b)(3)(A). *See* 11 CFR 9036.1(b)(1)(i) and (ii) and 9036.2(b)(1)(v). Nevertheless, the Commission notes that the use of computer technology to solicit and receive matchable contributions through the Internet does present new options for a committee's compliance with the ''best efforts'' rules.

The requesters of both AO 1995–9 and 1999–9 stated that, if a contributor did not provide the required donor information, he or she would immediately receive another message asking again for the information. Some witnesses at the public hearing stated that contributors are more likely to provide information when prompted to do so by a computer than they might in other circumstances. In AO 1995–9, the Commission determined that, in the unique case of a contribution received over the Internet, the request could consist of an electronic message sent to the contributor's e-mail address. Any such request must be made after the committee receives the confirmation discussed above, and must meet the specific ''best efforts'' requirements set forth in 11 CFR 104.7(b)(2).

Credit Card Costs

The Commission has reconsidered the concern which it expressed in 1983 over the percentage of credit card contributions that could be matched, and determined that the costs of processing credit and debit card contributions should be an allowable fundraising expense. Several commenters and witnesses pointed out that the costs of processing credit card contributions may be a significantly smaller cost to the campaign than the expenses associated with direct mail solicitations, holding a physical fundraising event such as a dinner or a reception, or paying fundraising consultants.

Retroactive Application

These regulations will have retroactive application to otherwise qualified credit and debit card contributions made on January 1, 1999 and thereafter, unless Congress and the President disapprove the regulations. Now that the Commission has determined that credit and debit card contributions may be matched, it believes it is appropriate to retroactively match such contributions, since many presidential campaigns will have engaged in substantial fundraising by the time these rules take effect. Since matching funds will not be disbursed until after the start of the matching payment period on January 1, 2000, 26 U.S.C. 9032(6), 9037, this provides ample notice to those campaigns that wish to utilize this fundraising approach.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that these regulations do not affect a substantial number of entities, and most covered entities are not ''small entities'' for purposes of the Regulatory Flexibility Act. Therefore the rules would not have a significant economic effect on a substantial number of small entities.

List of Subjects 11 CFR Part 9034

Campaign funds, recordkeeping and reporting requirements.

For the reasons set forth in the preamble, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 9034—ENTITLEMENTS

1. The authority citation for Part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

2. Section 9034.2 is amended by revising paragraph (b), by adding a sentence at the end of the introductory text of paragraph (c), and by adding new paragraph (c)(8), to read as follows:

§ 9034.2 Matchable contributions.

* * * * *

(b) For purposes of this section, the term *written instrument* means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; any similar negotiable instrument; or, for contributions by credit or debit card, a paper record, or an electronic record that can be reproduced on paper, of the transaction. For purposes of this section, the term *written instrument* also means, in the case of a contribution by a credit card or debit card, either a transaction slip or other writing signed by the cardholder, or in the case of such a contribution made over the Internet, an electronic record of the transaction created and transmitted by the cardholder, and including the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form by the recipient candidate or candidate's committee.

(c) * * * For purposes of this section, the term *signature* means, in the case of a contribution by a credit card or debit card, either an actual signature by the cardholder who is the donor on a transaction slip or other writing, or in the case of such a contribution made over the Internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder.

* * * * *

(8) Contributions by credit or debit card are matchable contributions, provided that:

(i) The requirements of paragraph (b) of this section concerning a written instrument and of paragraph (c) of this section concerning a signature are satisfied. Contributions by credit card or debit card where the cardholder's name and card number are given to the recipient candidate or candidate's committee only orally are not matchable.

(ii) Evidence is submitted by the committee that the contributor has affirmed that the contribution is from personal funds and not from funds otherwise prohibited by law.

3. Section 9034.3 is amended by removing the phrase ''or credit card transaction'' in paragraph (c).

Dated: June 11, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–15253 Filed 6–16–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–66–AD; Amendment 39–11196; AD 99–13–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to BHTC Model 206L–4 helicopters. This action requires a reduction in the retirement lives of certain collective idler links and collective levers, and re-identifying certain collective idler links and collective levers. This amendment is prompted by the discovery of two types of collective idler links and collective levers—manufactured from different materials—that are identified with the same part numbers but should have substantially different retirement lives. The actions specified in this AD are intended to prevent use of a collective idler link (link) or collective lever (lever) beyond its retirement life, which could lead to failure of the link or lever and subsequent loss of control of the helicopter.

DATES: Effective July 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–66–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, Fort Worth, Texas 76193, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 206L–4 helicopters. Transport Canada advises that certain part-numbered links and levers are manufactured from different materials (some from forged material and others from rolled plate stock); however, the links and levers are identified with the same part number. The links and levers manufactured from forged material have a longer retirement life than those manufactured from rolled plate stock.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 206L–98–110, dated May 6, 1998, which provides instructions for differentiating the differently-manufactured links and levers and re-identifying certain links and levers. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–98–20, dated August 5, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

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

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L–4 helicopters of the same type design registered in the United States, this AD is being issued to prevent use of a link or lever beyond its retirement life, which could lead to failure of the link or lever and subsequent loss of control of the helicopter. This AD requires determining which type of link and lever is installed on the helicopter, a reduction in the service life of certain links and levers, and re-identifying certain links and levers. The actions are required to be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, determining which types of link and lever are installed on the helicopter and re-identifying certain links and levers; reducing the retirement lives of certain links and levers; and replacing those links and levers that have reached or exceeded these revised retirement lives are required within 25 hours time-in-service, and this AD must be issued immediately.

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

The FAA estimates that 78 helicopters will be affected by this AD, that it will take approximately 0.5 work hour to identify and replace a link and lever, if necessary, and 1 work hour to re-identify the link and lever, and that the average labor rate is $60 per work hour. Required parts will cost a maximum of $8,880 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $692,640.

Comments Invited

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

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

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–66–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–13–03 Bell Helicopter Textron Canada: Amendment 39–11196. Docket No. 98–SW–66–AD.

Applicability: Model 206L–4 helicopters, certificated in any category.

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

Compliance: Required within 25 hours time-in-service, unless accomplished previously.

To prevent use of a collective idler link (link) or collective lever (lever) beyond its retirement life, which could lead to failure of the link or lever and subsequent loss of control of the helicopter, accomplish the following:

(a) Determine the part numbers and serial numbers of the link and the lever in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 206L–98–110, dated May 6, 1998 (ASB).

(b) Revise the Airworthiness Limitations section of the applicable maintenance manual to reflect the retirement lives in hours as stated in step 5, Part I of the Accomplishment Instructions in the ASB.

(c) Remove any link or lever that has reached its retirement life and replace it with an airworthy link or lever.

(d) Re-identify links and levers that do not have a serial number listed in Notes A or B of step 5, Part I of the Accomplishment Instructions in the ASB by marking the links and levers in accordance with Part II of the Accomplishment Instructions in the ASB. Re-identified links, P/N 206–010–446–107FM, and re-identified levers, P/N 206–010–447–109FM, have the same retirement lives as links, P/N 206–010–446–107, and levers, P/N 206–010–447–109, respectively.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(g) The identification, service life determination, and re-identification of the link and lever shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 206L–98–110, dated May 6, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 2, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–20, dated August 5, 1998.

Issued in Fort Worth, Texas, on June 8, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15363 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–17–AD; Amendment 39–11195; AD 99–13–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, that currently requires conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. This amendment requires the same corrective actions required by the existing AD; however, the applicability is reduced to encompass only certain part-numbered fuel filters. This amendment is prompted by jammed fuel filter by-pass valves and new

information that justifies a reduction in the applicability of the superseded priority letter AD. The actions specified by this AD are intended to prevent engine power loss due to fuel starvation, which could cause one or both engines to flameout and a subsequent forced landing.

DATES: Effective July 2, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 2, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, Technical Support, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone 800–232–0323, fax 972–641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On August 20, 1998, the FAA issued Priority Letter AD 98–18–09, applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, to require, within 25 hours time-in-service (TIS) and any subsequent time the fuel filter clogged caution lights illuminate, conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. That action was prompted by reports of jammed fuel filter by-pass valves discovered during routine maintenance. That condition, if not corrected, could result in engine power loss due to fuel starvation, which could cause one or both engines to flameout and a subsequent forced landing.

Since the issuance of that AD, the Direction Generale De L'Aviation Civile (DGAC) has issued revised AD's which specify that the AD's are only applicable to helicopters with the following part-numbered fuel filters installed:

Vendor part No.	Eurocopter France part No.
–4020P25	(704A44620031)
–4020P25–1	(704A44620034)
–4020P25–2	(704A44620035)
–4020P25–3	(704A44620036)

The DGAC, which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. The DGAC advises that jammed valves could result in power loss due to fuel starvation, which could cause one or both engines to flameout. The DGAC issued AD 98–318–071(A)R1 and AD 98–319–012(A)R1, both dated November 4, 1998, applicable to Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. (The Model AS 332C1 does not have a United States type certificate.)

The FAA has reviewed Eurocopter France Service Telex 00067, dated July 24, 1998 (Service Bulletin No. 01.00.56), which describes procedures for verifying that the valve is correctly closed in each engine fuel filter, conducting a filter clogging warning test on helicopters with certain part-numbered fuel filters installed and, if necessary, replacing a jammed valve with an airworthy valve.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters of the same type design, this AD supersedes Priority Letter AD 98–18–09 to require conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model AS 332C, L, L1, and L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD would be $180 per helicopter, assuming no valve would need to be replaced.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–17–AD.'' The postcard will be date stamped and returned to the commenter.

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

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–11195, to read as follows:

AD 99–13–02 Eurocopter France: Amendment 39–11195. Docket No. 99–SW–17–AD. Supersedes Priority Letter AD 98–18–09, Docket No. 98–SW–38–AD.

Applicability: Eurocopter France Model AS 332C, L, L1, and L2 helicopters, with any of the following part-numbered fuel filters installed, certificated in any category:

Vendor part No.	Eurocopter France part No.
–4020P25	(704A44620031)
–4020P25–1	(704A44620034)
–4020P25–2	(704A44620035)
–4020P25–3	(704A44620036)

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 power loss due to fuel starvation, which could cause one or both engines to flameout and a subsequent forced landing, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and after any subsequent flight during which either or both fuel filter clogged caution lights illuminate:

(1) Verify that the fuel filter by-pass valve (valve) is correctly closed in each engine fuel filter in accordance with paragraph CC.1), Eurocopter France Service Telex 00067 (Service Bulletin No. 01.00.56), dated July 24, 1998 (SB).

(2) If a valve is jammed (open or closed), clean the valve in accordance with paragraph CC.2)B) of the SB or replace the valve with an airworthy valve. Repeat the requirements of paragraph (a)(1) of this AD.

(3) Conduct a ''filter'' clogging warning test (test) in accordance with paragraphs CC.2), CC.2)A) and CC.2)B) of the SB.

(4) If a jammed valve (open or closed) is detected during the test, clean the valve in accordance with paragraph CC.2)B) of the SB or replace the valve with an airworthy valve. Repeat the requirements of paragraph (a)(3) of this AD.

(5) When the test result is satisfactory, repeat the requirements of paragraph (a)(1) of this AD.

(b) Within 25 hours TIS, insert a copy of this AD into the Rotorcraft Flight Manual (RFM) or make the following pen and ink addition to the RFM Emergency Procedure for fuel filter clogged caution light illumination: ''If both fuel filter clogged caution lights illuminate, land as soon as practicable.''

(c) If both filter clogged caution lights illuminate, after landing, either:

(1) Accomplish the requirements of paragraph (a) of this AD before further flight, or,

(2) Replace both filter cartridges with airworthy filter cartridges and fly to a location where the requirements of paragraph (a) of this AD must be accomplished before further flight.

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

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

(e) Special flight permits will not be issued.

(f) The inspection shall be done in accordance with Eurocopter France Service Telex 00067, dated July 24, 1998, (Service Bulletin No. 01.00.56). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, Technical Support, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone 800–232–0323, fax 972–641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 2, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 98–318–071(A)R1 and AD 98–319–012(A)R1, both dated November 4, 1998.

Issued in Fort Worth, Texas, on June 8, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–15362 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–05]

Establishment of Class E Airspace; Escobas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Escobas, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 15675 is effective 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15675). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule

advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15388 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–06]

Revision of Class E Airspace; Guthrie, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Guthrie, OK.

EFFECTIVE DATE: The direct final rule published at 64 FR 15674 is effective 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15674). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15387 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–07]

Revision of Class E Airspace; Shawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Shawnee, OK.

EFFECTIVE DATE: The direct final rule published at 64 FR 15673 is effective 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15673). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15386 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–04]

Revision of Class E Airspace; Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Lake Charles, LA.

EFFECTIVE DATE: The direct final rule published at 64 FR 15676 (corrected at 64 FR 19268) is effective 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 1999, (64 FR 15676) and published correction on April 20, 1999, (64 FR 19268). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 10, 1999.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–15389 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for clothes washers.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION:

The Appliance Labeling Rule (''Rule'') was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances. Clothes washers are among those categories. The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specificed DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rules requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under § 305.10 of the Rule the Commission will publish new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

Manufacturers of clothes washers have made the required annual submissions of data for this product category. In analyzing the data, the Commission has found that there has been a significant change of more than 15% in the ranges. Accordingly, the Commission is publishing new ranges of comparability for the clothes washer category. These ranges will supersede the current ranges for clothes washers, which were published originally on April 20, 1998 (63 FR 19398), and which became effective August 12, 1998.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after September 15, 1999. In addition, as of this effective date, manufacturers must base the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 1999 Representative Average Unit Costs of Energy for electricity (8.22 cents per kiloWatt-hour) and natural gas (68.8 cents per therm) that were published by DOE on January 5, 1999, 64 FR 487, and by the Commission on February 17, 1999, 64 FR 7785.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require ''collections of information'' (*i.e.*, recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget (''OMB''), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069). The amendment will not impose any new information collection requirements. Instead, it will provide manufacturers with revised ranges of comparability to use on the EnergyGuide labels already required by the Rule.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information: ''Compact'' includes all household clothes washers

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (''DOE'') to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due March 1.

with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
COMPACT	.....	.....
Top Loading	537	607
Front Loading	(*)	(*)
STANDARD	.....	.....
Top Loading	294	1154
Front Loading	156	314

(*) No Data Submitted

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15340 Filed 6–16–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 99N–1502]

Quality Mammography Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. The amendments are intended to incorporate changes required by the Mammography Quality Standards Reauthorization Act (MQSRA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event that the agency withdraws the direct final rule.

DATES: This regulation is effective November 1, 1999. Submit written comments on or before August 31, 1999. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

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

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20857, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The Mammography Quality Standards Act (Pub. L. 102–539) (the MQSA) was passed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that, to lawfully provide mammography services after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, shall be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). To become accredited and certified, a facility had to meet national quality standards to be established by the Secretary. The authority to establish these standards, to approve accreditation bodies, and to certify facilities was delegated by the Secretary to FDA.

Facilities were initially accredited and certified if they met the standards contained within the interim rules issued by FDA in the **Federal Register** of December 21, 1993 (58 FR 67558 and 67565), and amended by another interim rule published in the **Federal Register** on September 30, 1994 (59 FR 49808). More comprehensive standards were proposed by FDA in the **Federal Register** of April 3, 1996 (61 FR 14856, 61 FR 14870, 61 FR 14884, 61 FR 14898, and 61 FR 14908). After some revision in response to the approximately 8,000 comments received on the proposed rule, a final rule amending part 900 (21 CFR part 900) was published in the **Federal Register** of October 28, 1997 (62 FR 55852) (hereinafter referred to as the October 1997 final rule). The effective date of most of the new standards contained within the final rule is April 28, 1999, but a few will not become effective until October 28, 2002.

On October 9, 1998, the MQSRA (Pub. L. 105–248) became law. The basic purpose of the MQSRA was to extend the authorities established by the MQSA until September 30, 2002. However, the MQSRA also contained a requirement that was significantly different from the corresponding requirement in the October 1997 final rule (62 FR 55852). Although this MQSRA requirement will become effective on April 28, 1999, with or without the amendment of the final rule, FDA decided to amend the final rule to incorporate the change. The purpose of this amendment is to provide to the mammography facilities the convenience of being able to find all of the quality standards within a single document instead of having to consult both the October 1997 final rule and the MQSRA and to avoid confusion as to the applicable reporting requirement.

Other provisions of the MQSRA clarify the basis for some of the requirements contained within the October 1997 final rule. FDA is also amending the final rule to conform its wording of those requirements to that of the statute.

II. Changes in the Regulations

A. Reporting Requirements

Section 900.12(c)(2) (21 CFR 900.12(c)(2)) of the Ocotober 1997 final rule describes the requirements for communicating mammography results to the patients. As published in the October 1997 final rule, these requirements mandated that each mammography facility have a system to ensure that the results of each examination are communicated to the patient in a timely manner. Patients without a referring health care provider were to be sent the report of the examination (as described in § 900.12(c)(1)) directly by the mammography facility, along with a written notification or summary of the results in lay terms. It was further required by the October 1997 final rule that such self-referred patients should be referred to a health care provider when clinically indicated.

In the case of patients with a referring health care provider, § 900.12(c)(3) required that the health care provider receive the report of the examination. The facility's system for ensuring that results reached the patient could utilize the services of that health care provider to achieve that goal. There was no specific requirement that a summary in lay terms be provided to the patient with a referring health care provider.

The MQSRA amended the MQSA to specifically require that all patients, not just self-referred patients, receive directly from the mammography facility, a summary of the written report in terms easily understood by a lay person. As previously noted, this MQSRA requirement will go into effect on April 28, 1999. FDA is amending § 900.12(c)(2) to incorporate this new requirement.

B. Clarifications

The MQSRA at several points clarified the provisions of the MQSA upon which certain requirements of the interim and final rules were based. In contrast to the change in the patient reporting requirements, these clarifications became effective on October 9, 1998, the date on which the MQSRA became law. FDA is amending the regulations to similarly clarify the wording of the October 1997 final rule on these points.

1. Review Physicians

The most important function of the accreditation bodies approved by FDA is to conduct a quality review of clinical images submitted by facilities seeking accreditation. This review is the key factor in determining if the facility should be accredited and then certified. It has been recognized from the start of the MQSA program that the physicians used by the accreditation bodies to review the clinical images submitted by the facilities should meet qualifications beyond those needed to serve as interpreting physicians in mammography facilities. All accreditation bodies applying to FDA for approval must demonstrate that their reviewing physicians have the high qualifications necessary to perform such reviews before approval is given.

In section 4, the MQSRA emphasized these points by defining the physicians reviewing clinical images for the accreditation bodies as ''review physicians.'' In the MQSRA definition, it is further recognized that the accreditation bodies can establish, with FDA approval, additional qualifications for these review physicians beyond the qualifications applicable to inspecting physicians in mammography facilities.

FDA is adding § 900.2(yy) to incorporate the MQSRA definition of ''review physician'' into the final rule. FDA is further amending § 900.4 in order to use the term review physician at the appropriate points. In addition, because this term could be confused with the term ''reviewing interpreting physician,'' presently used in connection with the requirements for the mammography audit, FDA is changing the term, ''reviewing interpreting physician'' to ''audit interpreting physician'' in § 900.12(f).

2. Patient Notification

The October 1997 final rule at § 900.12(j) states that if FDA determines that any activity related to the provision of mammography at a facility presents a sufficiently serious risk to human health, the agency may require the facility to notify the patients, their physicians, and/or the public of actions that may be taken to minimize this risk. This provision was established to aid FDA in fulfilling its general responsibility under the MQSA to inform the public about facilities against which the agency has been required to take action for failure to meet the quality standards. In section 10(a), the MQSRA provided a specific statement of the agency's authority to require patient notification. FDA is amending the wording of § 900.12(j) to bring it into conformance with the wording of the MQSRA on this point.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how it will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because the rule contains direct incorporations of new statutory mandates. The rule incorporates amendments to section 354(a), (e), (f), and (h) of the Public Health Service Act made by the MQSRA. FDA anticipates no significant adverse comment. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing, elsewhere in this issue of the **Federal Register**, a companion proposed rule that is identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA is providing a comment period on the direct final rule to end on August 31, 1999. If the agency receives any significant adverse comment, FDA intends to withdraw this final rule by publication of a document in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. It should be remembered, however, that the requirements themselves were established by the MQSRA. FDA must implement these statutory provisions.

In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment shows how the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the Administrative Procedure Act (5 U.S.C. 552 *et seq.*). If FDA receives no significant adverse comment during the specified comment period, FDA intends to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends, confirming the effective date.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of these amendments under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze the impact of a rule on small entities. The Unfunded Mandates Reform Act requires (in section 201) that agencies prepare an assessment of

anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation).

As previously noted, the amendments explained under section II.B of this document concerning clarifications merely clarifies provisions already contained within the final rule published on October 28, 1997. The impacts of the provisions of that final rule were discussed in the preamble of the final rule (62 FR 55852 at 55961), and are unchanged by the clarifications. Any economic impact of the present amendments is related solely to the change in the patient reporting requirement mandated by the MQSRA. Given the statutory basis for extending the requirement to all mammography facilities effective April 28, 1999, FDA did not consider alternatives to implementing the requirement.

In the October 1997 final rule, FDA estimated that there were 9,800 mammography facilities that would be considered small. Moreover, FDA previously estimated the impact of a requirement for sending a lay summary of results to all patients during the development of its proposed rule of April 3, 1996 (61 FR 14856), although that requirement was removed from the October 1997 final rule in response to public comments (Ref. 1). FDA believes that these estimates remain accurate.

This earlier estimate concerning the impact of required lay summaries was based upon the assumption that an adequate lay summary of results could be provided in the great majority of cases in a brief, standardized format. Using this assumption, it was estimated that the compliance cost per examination would be $0.94, including the labor of the office worker and the cost of postage.

To convert this per examination cost to a national total, it was necessary to make several other assumptions. Using the best data and expert opinion available at the time, it was estimated that approximately 25 million mammography examinations were conducted annually in this country. Of this, it was estimated that 7.7 percent or 1,925,000 were examinations of self-referred patients. Because facilities were already required by the MQSA (and by the interim rule) to provide a lay summary of results to self-referred patients, that portion of the cost of sending lay summaries had already been included in the impact estimates made in association with the development of the interim rule of October 27, 1993.

There remained then approximately 23,075,000 patients for which this was potentially a new requirement. However, it was further estimated that 40 percent of the patients were already receiving a lay summary in some form from the facility at which they received their examinations. Thus, the new requirement would lead to additional lay summaries in only 60 percent of the referred examinations or approximately 13,845,000. At $0.94 a lay summary, the added cost would be slightly over $13 million a year.

Two major changes have occurred since the information upon which these estimates were based was collected in late 1995. Most significantly, through FDA's activities and those of other private and government groups, public awareness of the need for regular mammography examinations and public confidence that a high quality examination will be received have both increased. As a result, the number of examinations given per year has increased to an estimated 40 million. This requires increasing the costs estimated above by 60 percent. Postage rates have also gone up $0.01 per letter thus the cost per lay summary would increase from $0.94 to $0.95. The combined impact of these two changes is to increase the estimate of the annual incremental costs to meet this new requirement to approximately $21 million.

For the great majority of cases, the assumption that the lay summaries can be provided in brief, standardized format is valid. However, in approximately 10 percent of the cases, the overall assessment of the findings is expected to be ''Suspicious'' or ''Highly suggestive of malignancy.'' In such cases, the facility is required to ''make reasonable attempts to ensure that the results are communicated to the patients as soon as possible.''

Facilities that accept self-referred patients are already required by the final rule to make such attempts for cases with an overall assessment of ''suspicious'' or ''highly suggestive of malignancy.'' Based upon the assumption that the attempt would involve a 5 minute telephone conversation of the interpreting physician with the patient, a cost of $8.93 per examination was estimated. This cost would be in addition to the $0.95 estimated cost for the written lay summary, which would still need to be sent. Assuming that this would be a new cost for 10 percent of the 60 percent of the referred patients among the 40 million receiving examinations annually, the incremental cost for these contacts is approximately $21.4 million.

The total annual incremental cost due to this new requirement, therefore, would be approximately $42.4 million. Previously, the annual cost for compliance with the interim and final MQSA rules was estimated at $61.5 million (Ref. 2). Adding the cost of compliance with this new requirement brings the total annual cost of compliance with the final rule as amended to approximately $103.9 million.

Compliance with the new requirement would also be expected to increase the benefits from mammography. Mammography is the most effective technique presently available for the early detection of breast cancer. Early detection of breast cancer followed by prompt treatment can avert mortalities that can result if treatment is delayed until the cancer reaches a more advanced stage. In addition, the cost and severity of the treatment methods will in general be less when the cancer is treated at an early stage. Even in cases where the assessment is negative, there is expected to be a benefit arising from relieving the anxiety of the patient about the possible results of the examination through prompt reporting of results to the patient. But for these benefits to be gained, the patient must be informed of the results of the examination so that necessary followup actions can be promptly taken. Unfortunately, although it is not possible to make a quantitative estimate of the number of such cases, there have been frequent complaints about patients receiving the results of their examinations after an undue delay or not at all. Studies have also shown that direct communication of results to the patient by the mammography facility, as compared to traditional communication procedures where the facility communicates only with the referring provider, produces an improvement in compliance with followup recommendations (Ref. 3). The new requirement should thus add to the benefits expected from interim and final rules, which were previously estimated to range from $284 to $408 million (61 FR 55986), primarily due to a gain in averted mortalities (Ref. 2).

Based on these analyses, FDA has determined that the rule is consistent with the principles set forth in the Executive Order, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act. The wording of the requirement related to sending lay summaries to referred patients directly parallels that of the MQSRA and so, in accordance with the Executive Order, maximizes the net benefits to the extent allowed by that statute. Similarly, in accordance with the Regulatory

Flexibility Act, the impact of the rule on small entities has been analyzed. Finally, as noted previously, the incremental annual expenditures (beyond those already incurred from the previous interim and final rules) required by the rule are estimated at $42.4 million and thus do not exceed $100 million in 1 year so the rule does not come under the requirements of the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

This direct final 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 title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate are the times for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

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

Title: Lay Summary of Examination Results to Patients.

Description: This regulation merely implements a statutory information collection requirement; there is no additional burden attributable to the regulation. This direct final rule would conform the requirements of this section with the requirement of section 6 of Pub. L. 105–248 states that: ''(IV) whether or not such a physician is available or there is no such physician, a summary of the written report shall be sent directly to the patient in terms easily understood by a lay person.'' To produce the required lay summary, the mammography facilities will review the medical report of each patient's examination and collect from it the necessary information.

Respondent Description: Businesses and other for-profit organizations, nonprofit organizations.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this direct final rule by August 31, 1999 to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. At the close of the 75-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. 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.

VII. References

The following references are on display at 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. Eastern Research Group, ''Cost and Benefit Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Preliminary Final,'' March 14, 1996.

2. Eastern Research Group, ''Economic Impact Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Final,'' October 7, 1997.

3. Agency for Health Care Policy and Research (AHCPR), ''Quality Determinants of Mammography,'' AHCPR Pub. No. 95–0632, October 1994.

List of Subjects in 21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

2. Section 900.2 is amended by adding paragraph (yy) to read as follows:

§ 900.2 Definitions.

* * * * *

(yy) *Review physician* means a physician who, by meeting the requirements set out in § 900.4(c)(5), is qualified to review clinical images on behalf of the accreditation body.

3. Section 900.4 is amended by revising the last sentence of paragraph (a)(4); and by revising paragraphs (c)(3)(ii), (c)(5) introductory text, (c)(5)(i), (c)(5)(ii), and (c)(6)(ii) to read as follows:

§ 900.4 Standards for accreditation bodies.

(a) * * *

(4) * * * Such individuals who review clinical or phantom images under the provisions of paragraphs (c) and (d) of this section or who visit facilities under the provisions of paragraph (f) of this section shall not review clinical or phantom images from or visit a facility with which such individuals maintain a relationship, or when it would otherwise be a conflict of interest for them to do so, or when they have a bias in favor of or against the facility.

* * * * *

(c) * * *

(3) * * *

(ii) All clinical images submitted by a facility to the accreditation body shall be reviewed independently by two or more review physicians.

* * * * *

(5) Review physicians. Accreditation bodies shall ensure that all of their review physicians:

(i) Meet the interpreting physician requirements specified in § 900.12(a)(1) and meet such additional requirements as have been established by the accreditation body and approved by FDA;

(ii) Are trained and evaluated in the clinical image review process, for the types of clinical images to be evaluated by a review physician, by the accreditation body before designation as review physicians and periodically thereafter; and

* * * * *

(6) * * *

(ii) If a review physician identifies a suspicious abnormality on an image submitted for clinical image review, the accreditation body shall ensure that this information is provided to the facility and that the clinical images are returned to the facility. Both shall occur no later than 10-business days after

identification of the suspected abnormality.

* * * * *

4. Section 900.12 is amended by revising paragraphs (c)(2) and (f)(3) and the first sentence of paragraph (j)(2) to read as follows:

§ 900.12 Quality standards.

* * * * *

(c) * * *

(2) *Communication of mammography results to the patients.* Each facility shall send each patient a summary of the mammography report written in lay terms within 30 days of the mammographic examination. If assessments are ''Suspicious'' or ''Highly suggestive of malignancy,'' the facility shall make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.

(i) Patients who do not name a health care provider to receive the mammography report shall be sent the report described in paragraph (c)(1) of this section within 30 days, in addition to the written notification of results in lay terms.

(ii) Each facility that accepts patients who do not have a health care provider shall maintain a system for referring such patients to a health care provider when clinically indicated.

* * * * *

(f) * * *

(3) *Audit interpreting physician.* Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period(s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results and notifying other interpreting physicians of their results and the facility aggregate results. If followup actions are taken, the audit interpreting physician shall also be responsible for documenting the nature of the followup.

* * * * *

(j) * * *

(2) If FDA determines that the quality of mammography performed by a facility, whether or not certified under § 900.11, was so inconsistent with the quality standards established in this section as to present a significant risk to individual or public health, FDA may require such facility to notify patients who received mammograms at such facility, and their referring physicians, of the deficiencies presenting such risk, the potential harm resulting, appropriate remedial measures, and such other relevant information as FDA may require. * * *

Dated: June 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15292 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8822]

RIN 1545–AW28

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deposit of Federal employment taxes. The final regulations adopt the rules of temporary regulations that change the de minimis deposit rule for quarterly and annual return periods from $500 to $1,000. The regulations affect taxpayers required to make deposits of Federal employment taxes.

DATES: *Effective date:* These regulations are effective June 17, 1999.

Applicability date: For dates of applicability, see § 31.6302–1(f)(4).

FOR FURTHER INFORMATION CONTACT: Vincent Surabian, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 31, Employment Taxes and Collection of Income Tax at Source. On June 16, 1998, temporary and final regulations (TD 8771) relating to the deposit of Federal employment taxes under section 6302 of the Internal Revenue Code were published in the **Federal Register** (63 FR 32735). A notice of proposed rulemaking (REG–110403–98) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (63 FR 32774). No comments were received from the public in response to the notice of proposed rulemaking.

Explanation of Provisions

These final regulations adopt the rules of the temporary regulations. Under these rules, a taxpayer that has accumulated Federal employment taxes of less than $1,000 for a return period (quarterly or annual, as the case may be) does not have to make deposits but may remit its full liability with a timely filed return for the return period. The regulations are effective with respect to quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vincent Surabian, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the entry for Section 31.6302–1T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 31.6302–1, paragraph (f)(4) is revised to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) *De Minimis rule.* For quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999, if the total amount of accumulated employment taxes for the return period is less than $1,000 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

* * * * *

§ 31.6302–1T [Removed]

Par. 3. Section 31.6302–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 9, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–15182 Filed 6–16–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 100

[CGD08–99–041]

RIN 2115–AE46

Special Local Regulations; 4th of July Celebration Ohio River Mile 469.2–470.5, Cincinnati, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting a temporary final rule for the 4th of July Celebration. This event will be held on July 4, 1999, from 8 p.m. until 11 p.m. at Cincinnati, Ohio. This rule is necessary to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: This temporary final rule is effective from 8 p.m. until 11 p.m. on July 4, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this document are available for review at Marine Safety Office, Louisville; 600 Martin Luther King Jr. Place; Room 360; Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this document are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, no notice of proposed rulemaking for this temporary final rule has not been published, and good cause exists for making this rule effective less than 30 days after the date of publication. Following normal rulemaking would be impracticable. The details of the event were not finalized in sufficient time for us to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this temporary final rule is a fireworks display. The event is sponsored by JACOR Events. The fireworks will be launched from a deck barge in the Ohio River around mile 469.9, mid-channel. Non-participating vessels will be able to transit the area after the river is reopened.

Regulatory Evaluation

This temporary 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. The Office of Management and Budget has not reviewed it 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 rule to be so minimal, because of the event's short duration, that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial, because of the event's short duration. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.. 601 et seq., that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria of Executive Order 161 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under section 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

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

PART 100—[AMENDED]

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

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

2. Add a temporary § 100.35–T08–041 to read as follows:

§ 100.35–T08–041 Ohio River at Cincinnati, Ohio.

(a) *Regulated Area:* Ohio River Mile 469.2–470.5.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are spectators. ''Participants'' are those persons and vessels identified by the sponsor as taking part in the event. The ''official patrol'' consists of any Coast Guard, public, State, or local law-enforcement vessel, or any sponsor-provided vessel, assigned to patrol the event. The Coast Guard ''Patrol Commander'' is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Marine Safety Office, Louisville, to act as a Patrol Commander.

(1) No vessel may anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated

area during effective dates and times, unless cleared to enter by an official patrol vessel.

(2) When hailed or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels must comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time he or she deems it necessary for the protection of life or property, and is available on VHF–FM Channel 16 by using the call sign ''PATCOM''.

(c) *Effective Date:* This temporary final rule will be effective from 8 p.m. to 11 p.m. July 4, 1999.

Dated: June 4, 1999.

Paul J. Pluta,

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

[FR Doc. 99–15442 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AH05

Schedule for Rating Disabilities; Fibromyalgia

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule without change an interim final rule adding a diagnostic code and evaluation criteria for fibromyalgia to the Department of Veterans Affairs' (VA's) Schedule for Rating Disabilities. The intended effect of this rule is to insure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: *Effective Date:* This final rule is effective June 17, 1999. The interim rule adopted as final by this document was effective May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: On May 7, 1996, VA published in the **Federal Register** an interim final rule with request for comments (61 FR 20438). The rule added a diagnostic code, 5025, and evaluation criteria for fibromyalgia to the section of the VA Schedule for Rating Disabilities (38 CFR part 4) that addresses the musculoskeletal system (38 CFR 4.71a). A 60-day comment period ended July 8, 1996, and we received three comments, one from two physicians in the Department of Medicine at The Oregon Health Sciences University, and two from VA employees.

The evaluation criteria for fibromyalgia under diagnostic code 5025 have one requisite that applies to all levels: ''[w]ith widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms.'' The 40-, 20-, and 10-percent evaluation levels are additionally based on whether these findings are constant, or nearly so, and refractory to therapy; are episodic, but present more than one-third of the time; or require continuous medication for control. One commenter felt that the use of the phrase ''with or without'' as used in diagnostic code 5025 is confusing and might be interpreted as rendering the symptoms that follow the phrase as superfluous and unnecessary in the evaluation of fibromyalgia.

Some individuals with fibromyalgia have only pain and tender points; others have pain and tender points plus stiffness; still others have pain and tender points plus stiffness and sleep disturbance; etc. As a shorter way of stating this, we have used the phrase ''with or without,'' followed by a list of symptoms, to indicate that any or all of these symptoms may be part of fibromyalgia, but none of them is necessarily present in a particular case. When symptoms in addition to pain and tenderness are present, they may be used as part of the assessment of whether fibromyalgia symptoms are episodic or constant. When none of the symptoms on the list is present, the determination of whether the condition is episodic or constant must be based solely on musculoskeletal pain and tender points. The term ''with or without'' is also used in § 4.116 (Schedule of ratings—gynecological conditions and disorders of the breast) of the rating schedule under diagnostic code 7619, ''Ovary, removal of,'' where the criterion for a zero-percent evaluation is ''removal of one with or without partial removal of the other.'' We believe that in both cases the phrase ''with or without,'' rather than adding confusion, better defines the potential scope of the condition under evaluation. We therefore make no change based on this comment.

The same commenter questioned whether the intent is to place a ceiling of 40 percent on the evaluation of fibromyalgia despite the presence of one or more of the symptoms following the phrase ''with or without.''

As the evaluation criteria indicate, there may be multi-system complaints in fibromyalgia. If signs and symptoms due to fibromyalgia are present that are not sufficient to warrant the diagnosis of a separate condition, they are evaluated together with the musculoskeletal pain and tender points under the criteria in diagnostic code 5025 to determine the overall evaluation. The maximum schedular evaluation for fibromyalgia in such cases is 40 percent. If, however, a separate disability is diagnosed, e.g., dysthymic disorder, that is determined to be secondary to fibromyalgia, the secondary condition can be separately evaluated (see 38 CFR 3.310(a)), as long as the same signs and symptoms are not used to evaluate both the primary and the secondary condition (see 38 CFR 4.14 (Avoidance of pyramiding)). In such cases, fibromyalgia and its complications may warrant a combined evaluation greater than 40 percent. Since these rules are for general application, they need not be specifically referred to under diagnostic code 5025.

Another commenter referred to a statement in the supplementary information to the interim final rule that indicated that fibromyalgia is a benign disease that does not result in loss of musculoskeletal function. The commenter said that while it is not a malignant disease which leads to anatomic crippling, the result of persistent chronic pain is often musculoskeletal dysfunction.

The statement regarding the lack of loss of musculoskeletal function is supported by medical texts which state, for example, that objective musculoskeletal function is not impaired in fibromyalgia (''The Manual of Rheumatology and Outpatient Orthopedic Disorders'' 349 (Stephen Padgett, Paul Pellicci, John F. Beary, III, eds., 3rd ed. 1993)); that the syndrome is not accompanied by abnormalities that are visible, palpable, or measurable in any traditional sense; and that the patient must recognize the physical benignity of the problem (''Clinical Rheumatology'' 315 (Gene V. Ball, M.D. and William J. Koopman, M.D., 1986)). These medical texts confirm that fibromyalgia does not result in objective musculoskeletal pathology. The criteria we have established to evaluate disability due to fibromyalgia are therefore based on the symptoms of

fibromyalgia rather than on objective loss of musculoskeletal function.

The same commenter said that more could have been said about the wide clinical spectrum of fibromyalgia and the associated stress response which may lead to clinical problems of psychopathology, inappropriate behavior, deconditioning, hormonal imbalance, and sleep disorder.

The evaluation criteria do include a broad spectrum of possible symptoms, and sleep disturbance is one of them. As discussed above, any disability, including a mental disorder, that is medically determined to be secondary to fibromyalgia, can be separately evaluated. The rating schedule is, however, a guide to the evaluation of disability for compensation, not treatment (see 38 CFR 4.1), and it is unnecessary for that purpose to include a broad discussion of the clinical aspects of fibromyalgia. We therefore make no change based on this comment.

The same commenter said that it is important to stress that fibromyalgia may co-exist with other rheumatic disorders and have an additive effect on disability.

If two conditions affecting similar functions or anatomic areas are present, and one is service-connected and one is not (a situation that is not unique to rheumatic disorders), the effects of each are separately evaluated, if feasible. When it is not possible to separate the effects of the conditions, VA regulations at 38 CFR 3.102, which require that reasonable doubt on any issue be resolved in the claimant's favor, dictate that the effects be attributed to the service-connected condition. Since there is an established method of evaluating co-existing conditions, there is no need to stress the point that other diseases may co-exist with fibromyalgia, resulting in additive effects, and we make no change based on this comment.

The commenter also stated that the correct diagnosis of fibromyalgia and the exclusion of other rheumatic conditions are of paramount importance in ensuring a successful treatment program.

The diagnosis of fibromyalgia and exclusion of other rheumatic disorders are functions of the examiner and outside the scope of the rating schedule, which, as noted earlier, is a guide for the evaluation of disability for purposes of compensation, not treatment. We therefore make no change based on this comment.

One commenter stated that claimants with fibromyalgia will present with limitation of motion of various joints of the body, and the rating agency will have to take into consideration pain on movement and functional loss due to pain (see 38 CFR 4.40 and 4.45). The commenter felt that the proposed scheme invites separate ratings for limitation of motion of each joint.

Fibromyalgia is a ''nonarticular'' rheumatic disease (''The Merck Manual'' (1369, 16th ed. 1992)), and objective impairment of musculoskeletal function, including limitation of motion of the joints, is not present, in contrast to the usual findings in ''articular'' rheumatic diseases. Joint examinations in fibromyalgia are necessary only to exclude other rheumatic diseases because physical signs other than tender points at specific locations are lacking. The pain of fibromyalgia is not joint pain, but a deep aching, or sometimes burning pain, primarily in muscles, but sometimes in fascia, ligaments, areas of tendon insertions, and other areas of connective tissue (Ball and Koopman, 315). The evaluation criteria require that the pain be widespread, and that the symptoms be assessed based on whether they are constant or episodic, or require continuous medication, but they are not based on evaluations of individual joints or other specific parts of the musculoskeletal system. We believe the evaluation criteria make clear the basis of evaluation, and we therefore make no change based on this comment.

Based on the rationale set forth in the interim final rule document and this document, we are adopting the provisions of the interim final rule as a final rule without change. We also affirm the information in the interim final rule document concerning the Regulatory Flexibility Act.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Accordingly, the interim final rule amending 38 CFR part 4 which was published at 61 FR 20438 on May 7, 1996, is adopted as a final rule without change.

Approved: March 24, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–15342 Filed 6–16–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 133–4087o; FRL–6354–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on the latest revision to the Pennsylvania State Implementation Plan (SIP) consisting of the plan the Commonwealth will use to conduct the ongoing evaluation of its enhanced inspection and maintenance (I/M) program. With the submission of this program evaluation plan, Pennsylvania has remedied all conditions that EPA had placed upon approval of the Commonwealth's enhanced I/M program. Therefore, EPA is today converting its conditional approval of Pennsylvania's enhanced I/M program SIP revisions to full approval, in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 2, 1999 without further notice, unless EPA receives adverse written comment by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. They may also be viewed at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, or via e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1997, EPA published in the **Federal Register** a final rulemaking action (62 FR 4004) granting conditional interim approval to Pennsylvania's enhanced I/M program SIP revision submitted by Pennsylvania on March 22, 1996, and formally amended on June 27, 1996 and on July 29, 1996. The interim nature of the approval was granted under authority provided by the National Highway Systems Designation Act of 1995 (NHSDA). At the end of the specified 18-month interim approval period, the Commonwealth was required to make a demonstration of the effectiveness of their I/M program network, per NHSDA requirements, based upon actual program data. The conditional nature of the approval was granted under the Clean Air Act and required Pennsylvania to remedy, within a 12-month period, certain major program deficiencies. EPA's January 28, 1997 approval also required the Commonwealth to remedy certain minor deficiencies within the 18-month interim approval period.

Pennsylvania submitted supplements to its I/M SIP to EPA on November 13, 1997; February 24, 1998; and August 21, 1998. The purpose of these supplemental submittals was to bolster the enhanced I/M SIP to include updated information and to satisfy the conditions imposed by EPA in its January 28, 1998 conditional interim approval.

On September 2, 1998, EPA published a direct final rule in the **Federal Register** (63 FR 46664) approving Pennsylvania's November 13, 1997 and February 24, 1998 SIP revisions. That approval action removed four major conditions and seven minor conditions identified in EPA's January 28, 1997 interim conditional approval of Pennsylvania's I/M SIP.

On September 16, 1998, EPA published a direct final rule in the **Federal Register** (63 FR 49436) approving Pennsylvania's August 21, 1998 SIP revision supplement consisting of the Commonwealth's network effectiveness demonstration (per requirements of section 348 of the NHSDA). However, EPA received adverse comments upon the direct final rule, and withdrew it on October 21, 1998 in accordance with federal rulemaking procedures. EPA has since issued a final rule approving the August 21, 1998 submittal of the Commonwealth's network effectiveness demonstration. In the preamble to that final rule EPA addressed the adverse comments. That final rule also removed the remaining minor conditions identified in EPA's January 28, 1997 interim conditional approval of Pennsylvania's I/M SIP. As a result of these two rulemaking actions, EPA converted its interim conditional approval of the Commonwealth's I/M program to a conditional approval—leaving only a single condition remaining to be addressed. That one remaining condition was the submittal by Pennsylvania of a plan for conducting the required ongoing evaluation of its enhanced I/M program. On November 25, 1998, Pennsylvania submitted the required evaluation plan to fulfill this last condition. The November 25, 1998 submittal, as amended on March 3, 1999, is the subject of this rulemaking.

II. Summary of the Commonwealth's Submittal

On November 25, 1998, the Commonwealth of Pennsylvania submitted a supplement to its enhanced I/M SIP consisting of its plan for conducting the required ongoing program evaluation of its enhanced I/M program. On March 3, 1999, the Commonwealth bolstered the November 25, 1998 submittal to include documentation that public notice and hearing had been conducted on its chosen evaluation plan. The submitted plan reflects the Commonwealth's choice of an EPA-approved method for conducting an ongoing program evaluation. The purpose of the Commonwealth's November 25, 1998 and March 3, 1999 SIP submittals is to address and remedy the final condition set forth in EPA's January 28, 1997 interim conditional approval (62 FR 4004) of Pennsylvania's I/M program SIP, and codified at 40 CFR 52.2026(a)(2).

III. EPA Review of the SIP Revision

EPA conditioned its January 28, 1997 approval of the Commonwealth's SIP upon submission, by November 30 1998, of a final plan for conducting the required enhanced I/M program evaluation, which requires the use of an EPA approved methodology to be performed on 0.1 percent of the I/M subject vehicles in the Pittsburgh and Philadelphia program areas. EPA required the Commonwealth to select a methodology that complies with Federal I/M rule requirements set forth at 40 CFR 51.353(c)(3). On October 30, 1998, EPA's Office of Mobile Sources issued a guidance memorandum entitled ''Guidance on Alternative I/M Program Evaluation Methods''. This document outlined three EPA accepted alternative I/M program evaluation methodologies available to states to comply with the requirements of 40 CFR 51.353(c). The approved alternatives include: (1) the Sierra Research method; (2) the NYTEST (or VMAS) method; and (3) the RG240 method. The guidance also addressed the need to establish a baseline from which to determine I/M program emissions benefits, in order to fully evaluate enhanced I/M program effectiveness. For areas that had previously existing I/M programs prior to implementation of an enhanced I/M program, the guidance established a methodology for determining a benchmark, since a direct comparison between pre-program and post-program baselines for subsets of such vehicles would not be possible.

For its evaluation methodology, Pennsylvania chose to use the Sierra Research method, utilizing a correlation between another state's IM240 program and its own acceleration simulation mode (ASM) and idle testing programs, per EPA's October 30, 1998 guidance. These correlations will then be used to convert Pennsylvania's idle/ASM measurements to IM240-equivalent measurements for each vehicle. These will then form the basis for a modeled comparison between the Commonwealth's program and the benchmark IM240 program. For its benchmark comparison of estimating a baseline, Pennsylvania intends to correlate its idle/ASM program data to IM240 data from New Jersey's or Maryland's program.

IV. Final Action

EPA is hereby approving Pennsylvania's November 25, 1998 and March 3, 1999 SIP submittals.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment, since the Commonwealth's SIP revision complies with applicable guidance and with the requirements at 40 CFR 51.353(c). The Commonwealth has fully met the requirements of the relevant condition set by EPA in its January 28, 1997 conditional approval of the Pennsylvania I/M program SIP revision.

However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as a proposal to approve the SIP revision in the event adverse comments are filed. This rule will be effective on August 2, 1999 without further notice unless EPA receives adverse comment by July 19, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public

that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

EPA, through previous rulemaking actions, approved Pennsylvania's enhanced I/M program SIP revisions submitted prior to November 25, 1998. Those SIP revisions satisfied all but one of the major and minor conditions set forth by EPA in its January 28, 1997 (62 FR 4004) approval of Pennsylvania's enhanced I/M program. EPA also taken final action to approve the Commonwealth's I/M program network effectiveness demonstration, required under section 348 of the NHSDA. Because the Commonwealth has now addressed all of the deficiencies identified by EPA with respect to its enhanced I/M program SIP, EPA is acting today to incorporate by reference all of Pennsylvania's enhanced I/M SIP revisions into the Code of Federal Regulations, at 40 CFR 52.2020(c)(139).

Since EPA has previously taken final approval actions on all of Pennsylvania's enhanced I/M SIP revisions submitted prior to November 25, 1998, EPA is now providing opportunity for comment only upon today's approval of the Commonwealth's program evaluation plan—submitted on November 25, 1998 and amended on March 3, 1999.

By taking final, full approval upon Pennsylvania's submitted enhanced I/M program SIP revisions, the mandatory sanctions and Federal Implementation Plan obligations under the Clean Air Act have been satisfied. All sanctions and FIP clocks related to approval of Pennsylvania's I/M program are terminated upon the effective date of today's action.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, 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 and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and

is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to fully approve Pennsylvania's enhanced I/M program SIP must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(139) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(139) Revisions to the Pennsylvania State Implementation Plan adopting an enhanced motor vehicle inspection and maintenance (I/M) program, submitted on March 22, 1996, and formal amendments submitted by the Secretary of the Pennsylvania Department of Environmental Protection on June 27, 1996; July 29, 1996; November 1, 1996; October 22, 1997; November 13, 1997; February 24, 1998; August 21, 1998; November 25, 1998; and March 3, 1999.

(i) Incorporation by reference.

(A) Letter of November 13, 1997 from the Secretary of the Pennsylvania Department of Environmental Protection transmitting regulations for an enhanced motor vehicle inspection and maintenance program.

(B) Pennsylvania Department of Transportation Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program regulations (contained in Title 67 of the PA Code), effective September 27, 1997.

(*1*) A definition for ''temporary inspection approval indicator'', added to section 175.2.

(*2*) Section 175.11

(*3*) Paragraph (f)(4) of section 175.29

(*4*) Paragraphs (a), (b), (c), and (d) of section 175.41. Paragraph (b)(3) of section 175.41. Subparagraphs (d)(2)(ii) and (d)(2)(iii), and paragraphs (e)(5) and (f)(4) of section 175.41.

(*5*) Sections 175.42, 175.43, 175.44, and 175.45.

(*6*) Sections 177.1, 177.2, 177.3, 177.21, 177.22, 177.23, 177.24, 177.51, 177.52, 177.53, 177.101, 177.102, 177.103, 177.104, 177.105, 177.106.

(*7*) Sections 177.201, 177.202, 177.203, 177.204, 177.231, 177.233, 177.251, 177.252, 177.253, 177.271, 177.272, 177.273, 177.274, 177.281, 177.282, 177.291, 177.292, 177.301, 177.302, 177.304, and 177.305.

(*8*) Sections 177.401, 177.402, 177.403, 177.404, 177.405, 177.406, 177.407, 177.408, 177.421, 177.422, 177.423, 177.424, 177.425, 177.426, 177.427, and 177.431.

(*9*) Sections 177.501, 177.502, 177.503, 177.504, and 177.521.

(*10*) Sections 177.602, 177.603, 177.605, 177.606, 177.651, 177.652, 177.671, 177.672, 177.673, and 177.691.

(*11*) Appendix A to Title 67 of the Pennsylvania Code.

(*12*) Appendix B to Title 67 of the Pennsylvania Code.

(ii) Additional Material.—Remainder of Submittals

The Commonwealth submitted materials in support of its enhanced motor vehicle inspection and maintenance (I/M) program regulation. These materials were submitted in formal SIP revisions dated: March 27, 1996; July 29, 1996; November 1, 1996; November 13, 1997; February 24, 1998; August 21, 1998; November 25, 1998; and March 3, 1999, and include:

(A) Submittal submitted under a letter dated March 22, 1996, from the Secretary of the Pennsylvania Department of Environmental Protection.

(B) Materials submitted under a letter dated June 27, 1996, from the Secretary of the Department of Environmental Protection.

(C) Materials submitted under a letter of July 29, 1996, from the Secretary of the Department of Environmental Protection.

(D) Materials submitted under a letter of November 1, 1996, from the Secretary of the Department of Environmental Protection.

(E) Materials submitted under a letter of October 27, 1997, from the Secretary of the Department of Environmental Protection.

(F) Materials submitted under a letter of February 24, 1998, from the Secretary of the Department of Environmental Protection.

(G) Documents submitted by a letter dated August 21, 1998, from the Secretary of the Department of Environmental Protection.

(H) Materials submitted by the Secretary of the Department of Environmental Protection, in a letter dated November 25, 1998, and amended by a letter dated March 3, 1999.

3. In Section 52.2026, the introductory sentence is removed and paragraph (a) and paragraph (b) are removed and reserved.

[FR Doc. 99–15163 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–3039a; FRL–6357–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Decorative Surfaces, Brake Shoe Coatings, Structural Steel Coatings, and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP). These revisions establish reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from solid resin decorative surfaces, brake shoe coatings, structural steel coatings, and digital imaging. EPA is fully approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 16, 1999 without further notice, unless EPA receives adverse written comment by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 814–2095, or by e-mail at donahue.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 10, 1999 and February 12, 1999, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). These SIP revisions, submitted by the Maryland Department of the Environment (MDE), consist of the control of volatile organic compound (VOC) emissions from solid resin decorative surface manufacturing, brake shoe coating operations, structural steel coating operations, and digital imaging.

II. Summary of SIP Revision

COMAR 26.11.19.07–1: Control of VOC Emissions From Solid Resin Decorative Surface Manufacturing

This new regulation establishes RACT standards to control VOC emissions from solid resin decorative surface (SRDS) operations. These operations do not fall under the requirements for other paper coatings at COMAR 26.11.19.07.

General Provisions

This section establishes definitions for the terms ''particle plant operation,'' ''related operations,'' ''shaped goods plant,'' and ''solid resin decorative surface operation.'' This new regulation applies to a person who owns or operates a solid resin decorative surface operation that is a major VOC source.

Requirements for SRDS Operations

This section establishes that SRDS facility owners or operators must control VOC emissions by venting the curing oven exhaust at each SRDS operation through a VOC control system, which consists of a condenser and carbon adsorber unit, or through another control system that is maintained and operated to reduce VOC emissions from the curing oven exhaust by 75% or more.

SRDS facility owners or operators, as well as owners and operators of shaped goods plants and related operations, must take all reasonable precautions to minimize VOC emissions from SRDS mixing vessels and storage tanks, including the use of covers on mixers except when adding or emptying materials, operator training in procedures to minimize spills and evaporative losses during the mixing and transferring of VOC containing materials, implementing programs to minimize the quantity of VOC-based materials used to clean lines or equipment, storing VOC-contaminated cloth or paper in closed containers, and implementing an effective leak inspection and maintenance program that includes monthly inspections of equipment for leaks.

Requirements for Particle Plant Operations

Particle plant owners or operators must vent the curing oven exhaust at each particle plant operation into a VOC control system consisting of a carbon adsorber unit, or other control system that is maintained and operated to reduce VOC emissions from the curing oven exhaust by 75% or more. Also, the requirements to control VOC emissions from mixing vessels and storage tanks at SRDS operations apply to particle plant operations.

Requirements for VOC Storage Tanks, Reporting and Recordkeeping Requirements

Raw material storage tanks containing VOC materials shall be equipped with vapor balance lines or conservation vents to minimize working and breathing losses. The reporting and recordkeeping requirements for affected sources are established in the source's permit to operate.

Evaluation: This revision, which regulates VOC emissions from solid resin decorative surface manufacturing, will result in significant enforceable VOC emission reductions and is acceptable to EPA.

COMAR 26.11.19.13–2: Control of VOC Emissions From Brake Shoe Coating Operations

This new regulation establishes standards for brake shoe coating operations based on VOC content in the coatings. This revision also amends COMAR 26.11.19.13B to exempt brake shoe coating operations and structural steel coating operations from Maryland's miscellaneous metal coating rule.

General Provisions

This regulation establishes definitions for the terms ''brake caliper rust preventive coating (brake caliper coating),'' and ''brake shoe coating operation,'' and provides that this rule applies to owners or operators of brake shoe coating operations at a premises that has actual total VOC emissions of 20 or more pounds per day (lbs/day) from all brake shoe coating operations.

Coating Requirements and Equipment Cleanup

An owner or operator of a brake shoe coating operation may not emit VOCs unless the VOC content of the coating is less than 6.3 pounds of VOC per gallon (lbs/gal) of coating applied (0.76 kilograms per liter [kg/l]) for brake shoe coating, and 4.8 lbs/gal (0.58 kg/l) for brake caliper coating. The coatings may be applied by dipping, by spraying with high volume low pressure or electrostatic spray systems, or by other comparable high transfer efficiency methods.

Persons who own or operate a brake shoe coating operation must store all

waste materials containing VOC in closed containers, and must maintain lids or covers on all containers or vessels containing VOC when not in use.

Evaluation: This SIP revision, controlling VOC emissions from brake shoe coating operations, will result in significant enforceable VOC emission reductions. EPA has determined that COMAR 26.11.19.13–1, as well as the administrative revisions to COMAR 26.11.19.13, is approvable as a SIP revision.

COMAR 26.11.19.13–3: Control of VOC Emissions From Structural Steel Coating Operations

This regulation establishes RACT standards for the control of VOC emissions from structural steel coating operations. Structural steel coating operations apply a protective coating to manufactured components such as welded steel joists, steel beams and columns that are used to assemble buildings and other structures.

General Provisions

This regulation establishes definitions for the terms ''controlled air spray system,'' ''dip coating operation,'' ''protective coating,'' and ''structural steel coating operation.'' Owners or operators of a structural steel coating operation that has a potential to emit VOCs of 25 or more tons per year or actual VOC emissions of 20 or more lbs/day are subject to this regulation.

Requirements for Structural Steel Coating Operations

The VOC content in protective coatings is limited to 3.9 lbs/gal for dip coating operations, and 3.5 lbs/gal for any means other than dip coating, which includes controlled air spray systems or other systems approved by MDE. However, a higher VOC content coating may be used if the VOC content does not exceed the standard by more than 20%, and if it is used only between November 1 of one year and March 31 of the next year.

The owner or operator of a structural steel coating operation also must minimize VOC emissions by using detergents, high pressure water, or low VOC cleaning materials to clean lines or equipment; using enclosed containers or VOC recycling equipment to clean spray gun equipment; storing all waste containing VOC in closed containers; and maintaining lids on any VOC-bearing materials when not in use.

Evaluation: This SIP revision, which regulates VOC emissions from structural steel coating operations, will result in VOC emission reductions from coatings of girders and building components that are not covered under Maryland's miscellaneous metal coatings rule. EPA has determined that COMAR 26.11.19.13–2 is approvable as a SIP revision.

COMAR 26.11.19.18: Screen Printing and Digital Imaging

This rule amends the previous regulation .18 by adding RACT standards for digital imaging. The same RACT limits for VOC content are retained from the previous COMAR 26.11.19.18, Control of VOC Emissions from Screen Printing. COMAR 26.11.19.18 is revised to delete the old interim dates for VOC content in screen printing operations.

General Provisions

The definition for the term ''digital imaging'' is added to this rule. This regulation applies to the same screen printing facilities listed in the previous screen printing rule (62 FR 53544, October 15, 1997), as well as to any person who performs digital imaging at a premise which causes VOC emissions of 20 or more lbs/day from all digital imaging.

Sections B to I from the previous COMAR 26.11.19.18 have been repealed and the new sections B–G are added. This eliminates expired interim dates for limiting VOC content for screen printing and adds RACT for digital imaging. All of the limits in Maryland's screen printing rule are retained in this revision. Digital imaging owners or operators subject to this regulation may not cause VOC emissions of more than 100 lbs/day from all digital imaging on the premises.

Evaluation: Controlling VOC emissions from digital imaging will result in enforceable emissions reductions. The revision also clarifies the screen printing regulation by eliminating passed dates. These amendments to COMAR 26.11.19.18 are approvable to EPA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 16, 1999 without further notice unless EPA receives adverse comment by July 19, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving the SIP revisions submitted by MDE on February 10, 1999 and February 12, 1999 to control VOC emissions from solid resin decorative coatings, brake shoe coating operations, structural steel coating operations, and digital imaging.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria,

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

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, 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 and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to the Maryland SIP establishing VOC control requirements for solid resin decorative surface manufacturing, brake shoe coatings, structural steel coatings, and digital imaging, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(142) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(142) Revisions to the Maryland State Implementation Plan submitted on February 10, 1999 and February 12, 1999 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Three letters dated February 10, 1998 and one letter dated February 12, 1999 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound (VOC) regulations in

Maryland's air quality regulations, COMAR 26.11.

(B) Regulations:

(*1*) Addition of new COMAR 26.11.19.07–1: Control of VOC Emissions from Solid Resin Decorative Surface Manufacturing, adopted by the Secretary of the Environment on May 20, 1998 and effective on June 15, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.07–1.A Definitions, including definitions for the terms ''particle plant operation,'' ''related operations,'' ''shaped goods plant,'' and ''solid resin decorative surface (SRDS) operation.''

(*ii*) addition of new COMAR 26.11.19.07–1.B Applicability.

(*iii*) addition of new COMAR 26.11.19.07–1.C General Requirements for SRDS Operations.

(*iv*) addition of new COMAR 26.11.19.07–1.D General Requirements for Particle Plant Operations.

(*v*) addition of new COMAR 26.11.19.07–1.E General Requirements for Shaped Goods Plants.

(*vi*) addition of new COMAR 26.11.19.07–1.F General Requirements for Related Operations.

(*vii*) addition of new COMAR 26.11.19.07–1.G Additional Requirements for VOC Storage Tanks.

(*viii*) addition of new COMAR 26.11.19.07–1.H Reporting and Record-Keeping Requirements.

(*2*) Addition of new COMAR 26.11.19.13–2: Control of VOC Emissions from Brake Shoe Coating Operations, adopted by the Secretary of the Environment on August 4, 1998 and effective on August 24, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.13–2.A Definitions.

(*ii*) addition of new COMAR 26.11.19.13–2.B Terms Defined, including definitions for the terms ''brake caliper rust preventive coating,'' and ''brake shoe coating operation.''

(*iii*) addition of new COMAR 26.11.19.13–2.C Applicability.

(*iv*) addition of new COMAR 26.11.19.13–2.D General Coating Requirements.

(*v*) addition of new COMAR 26.11.19.18.E Equipment Cleanup.

(*vi*) addition of new COMAR 26.11.19.13.B(3)(e) and (f), exempting brake shoe coating and structural steel coating operations from Miscellaneous Metal Coatings.

(*3*) Addition of new COMAR 26.11.19.13–3: Control of Volatile Organic Compounds from Structural Steel Coating Operations, adopted by the Secretary of the Environment on June 5, 1998, and effective on June 29, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.13–3.A Definitions, including definitions for the terms ''controlled air spray system,'' ''dip coating operation,'' ''protective coating,'' and ''structural steel coating operation.''

(*ii*) addition of new COMAR 26.11.19.13–3.B Applicability.

(*iii*) addition of new COMAR 26.11.19.13–3.C Coating Requirements.

(*iv*) addition of new COMAR 26.11.19.13–3.D Cleanup Requirements.

(*4*) Revision to COMAR 26.11.19.18: Control of VOC Emissions from Screen Printing and Digital Imaging, adopted by the Secretary of the Environment on August 4, 1998, and effective on August 24, 1998, including the following:

(*i*) addition of new COMAR 26.11.19.18.A(5–1), definition for the term ''digital imaging.''

(*ii*) deletion of existing COMAR 26.11.19.18.B–I.

(*iii*) addition of new COMAR 26.11.18.21.B Applicability.

(*iv*) addition of new COMAR 26.11.18.21.C General Requirements for Screen Printing.

(*v*) addition of new COMAR 26.11.18.21.D General Requirements for Plywood Sign Coating.

(*vi*) addition of new COMAR 26.11.18.21.E General Requirements for Plastic Card Manufacturing.

(*vii*) addition of new COMAR 26.11.19.18.F General Requirements for Digital Imaging.

(*viii*) addition of new COMAR 26.11.19.18.G Record Keeping.

(ii) Additional Material.

(A) Remainder of February 10, 1999 and February 12, 1999 Maryland State submittals pertaining to COMAR 26.11.19.07–1, .13–2, .13–3, and .18.

[FR Doc. 99–15159 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0027a, CO–001–0028a, & CO–001–0033a; FRL–6358–6]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Revisions Regarding Negligibly Reactive Volatile Organic Compounds and Other Regulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves three revisions to the Colorado State Implementation Plan (SIP). The SIP revisions being approved include: an update to the State's list of negligibly reactive volatile organic compounds (VOCs) to add acetone. The State also consolidated the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. These revisions were submitted for approval on September 16, 1997; a clarification to the definition of ''applicable requirement'' and corrections of typographical errors in parts A and B of Colorado Regulation No. 3. These revisions were also submitted on September 16, 1997; and an update to the list of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene. The State also repealed its requirements in Regulation No. 7 that required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. These revisions were submitted for approval on August 19, 1998. We approve these revisions because they are consistent with the requirements of the Clean Air Act (Act) and the Federal regulations.

DATES: This rule is effective on August 16, 1999 without further notice, unless we receive adverse comment by July 19, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA approves three SIP revisions from the State of Colorado. Those SIP revisions include the following:

A. The State updated its list of negligibly reactive VOCs to add acetone, as a result of revisions to the Federal definition of VOC. The State also consolidated the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. These regulation revisions were submitted by the Governor for approval on September 16, 1997. EPA approves all of these revisions, except for the deletion of the definition of VOC in part A of Regulation No. 3 which EPA is not acting;

B. The State adopted a clarification of the definition of ''applicable requirement'' and corrections of typographical errors in the State's new source review (NSR) permitting program in parts A and B of Colorado Regulation No. 3. This regulation revision was also submitted on September 16, 1997; and

C. The State updated its list of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene, as a result of revisions to the Federal definition of VOC. The State also repealed its requirements in section XII. of Regulation No. 7, which required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. These revisions were submitted on August 19, 1998. This submittal also included revisions to the Appendices of Regulation No. 3, which EPA is not acting on.

Note that the State's September 16, 1997 SIP submittal consisted of ten other separate revisions to rules and/or elements of the SIP. The other ten revisions will be, or have already been, acted on in separate **Federal Register** actions.

In addition, the State's August 19, 1998 SIP submittal included four other separate revisions to rules and/or elements of the SIP. Those other four SIP revisions will be, or have already been, acted on in separate **Federal Register** actions.

Part A of Regulation No. 3 is part of both the State's SIP and the State's title V operating permit program. Consequently, EPA will also address the revisions to Part A of Regulation No. 3 as revisions to the State's title V operating permit program in the near future.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective August 16, 1999 without further notice unless we receive adverse comments by July 19, 1999. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. What Specific Changes Were Made to Colorado SIP?

A. September 16, 1997 Submittal Regarding Negligibly Reactive VOCs

The September 16, 1997 SIP revisions regarding negligibly reactive VOCs included the following regulatory revisions:

1. The State added a definition of negligibly reactive VOCs to section I.G. of the Common Provisions Regulation. In section I.G., the State incorporated by reference the Federal list of VOCs with negligible photochemical reactivity from 40 CFR 51.100(s)(1) as revised on June 16, 1995 (61 FR 31633–31637). EPA added acetone to its list of negligibly reactive VOCs in the June 16, 1995 revisions. Section I.G. of the Common Provisions Regulation also includes, for easier reference, a list of the negligibly reactive VOCs identified in 40 CFR 51.100(s)(1).

2. The State deleted the lists of negligibly reactive VOCs in the following provisions: (a) the definition of ''net emissions increase'' in section I.G. of the Common Provisions Regulation; (b) section I.B.36.h. in part A of Regulation No. 3; (c) section I.D.4. in part B of Regulation No. 3; and (d) section II.B. of Regulation No. 7. These provisions now refer to the definition of negligibly reactive VOCs in the Common Provisions Regulation.

3. Last, the State deleted the definition of VOC in section I.B.67. of part A of Regulation No. 3 and instead referred to the definition of VOC in the Common Provisions Regulation.

The State made these revisions in part so that the next time the State needs to update the definition of negligibly reactive VOCs to reflect changes to the Federal definition, the State only has to revise one regulation.

B. September 16, 1997 Submittal of Clarifications and Corrections in Regulation No. 3

The September 16, 1997 submittal of Regulation No. 3 consisted of the following revisions:

1. A revision to the definition of ''applicable requirement'' in section I.B.9. of part A of Regulation No. 3 to indicate that permits issued by EPA under part C or D of the Act are also considered to be applicable requirements of the State's operating permit program.

2. Corrections of typographical errors in sections I.B.59(b) and V.C.12. of part A and in section III.D.2. of part B in Regulation No. 3.

C. August 19, 1998 Submittal of Revisions to the Common Provisions Regulation and Regulation No. 7

The State's August 19, 1998 submittal included the following regulatory revisions:

1. The State revised the definition of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene. This change was made pursuant to EPA's listing of perchloroethylene as a negligibly reactive VOC on February 7, 1996 (61 FR 4588).

2. The State also repealed the requirements in section XII. of Regulation No. 7, which required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. Since perchloroethylene is no longer considered to be a precursor to ozone formation, these requirements are no longer needed to protect the national ambient air quality standards (NAAQS) for ozone.

3. In addition, the State revised appendices B, C, and D of Regulation No. 3 to revise its list of hazardous air pollutants, pursuant to changes in the Federal list of hazardous air pollutants. However, these Appendices have not been approved as part of the SIP because they are not related to protection of the NAAQS. Thus, EPA is taking no action on the revisions to the Appendices of Regulation No. 3.

III. Why is EPA Taking This Action?

A. Revisions to Regulations No. 3 and 7 and the Common Provisions Regulation Regarding Negligibly Reactive VOCs

EPA finds the consolidation of the list of negligibly reactive VOCs from provisions in Regulations No. 3 and 7 into the Common Provisions Regulation to be approvable. In addition, EPA approves the revisions to the definition of negligibly reactive VOCs in the

Common Provisions Regulation since they implement revisions made to EPA's list of negligibly reactive VOCs in 40 CFR 51.100(s)(1).

However, the State's list of negligibly reactive VOCs contains some typographical errors and is not entirely consistent with the list in 40 CFR 51.100(s)(1). Because the State has incorporated by reference the Federal definition of negligibly reactive VOCs in 40 CFR 51.100(s)(1), EPA doesn't believe these typographical errors in the State's list pose any approvability concerns. EPA has notified the State of these errors and expects the State to correct these errors the next time it revises its definition of negligibly reactive VOCs. The State's definition of negligibly reactive VOCs is also not current with recent additions to the list of negligibly reactive VOCs in 40 CFR 51.100(s)(1). Specifically, on October 8, 1996, EPA added three compounds to the list of negligibly reactive VOCs (see 61 FR 52848). On August 25, 1997, EPA added sixteen compounds to the list of negligibly reactive VOCs (see 62 FR 44900). Last, on April 9, 1998, EPA added one compound to the list of negligibly reactive VOCs (see 63 FR 17331). States are not obligated to exclude from control as a VOC those compounds which EPA has found to be negligibly reactive. However, States should not include these compounds in their VOC emission inventories for determining reasonable further progress under section 182(b)(1) of the Act and should not take credit for controlling these compounds in their ozone control strategy.

EPA is not acting on the deletion of the definition of VOC in section I.B.67. of part A of Regulation No. 3, which now references the definition of VOC in the Common Provisions Regulation. The definition of VOC in the Common Provisions Regulation allows for the use of alternative or equivalent test methods to measure VOCs, rather than EPA reference test methods, upon approval by the Colorado Air Pollution Control Division. This essentially allows for a variance from the SIP, which is not allowed by section 110(i) of the Act. The same issue exists in the State's definition of VOC in Regulation No. 7. EPA notified the State of these deficiencies in a June 5, 1998 letter and informed the State that the definition of VOC in the Common Provisions Regulation and Regulation No. 7 must be revised to require EPA approval of alternative or equivalent test methods. The definition of VOC in Regulation No. 3 that is currently approved as part of the SIP provides that a source must obtain prior approval from EPA in order to use an equivalent or alternative method. Thus, EPA will not act on the deletion of the definition of VOC in Regulation No. 3 until the State corrects the definition of VOC in the Common Provisions Regulation. This definition in Regulation No. 3, which is consistent with the Act, will remain part of the EPA-approved SIP.

B. Clarifications and Minor Corrections in Regulation No. 3

EPA finds that the State's revision to the definition of ''applicable requirement'' in part A of Regulation No. 3 is necessary to ensure the State has adequate authority to incorporate into title V operating permits requirements from preconstruction permits issued by EPA. Thus, this revision strengthens the State's permit program, as does the correction of typographical errors in Regulation No. 3.

C. Revisions to Regulation No. 7 Repealing the Requirements for Dry Cleaners That Use Perchloroethylene as a Solvent

As stated above, EPA listed perchloroethylene as a VOC with negligible photochemical reactivity in a February 7, 1996 rulemaking (61 FR 4588). Thus, perchloroethylene is not considered to be a precursor to ozone formation and does not need to be included in SIPs to protect the ozone NAAQS. Consequently, the State repealed the provisions in section XII. of Regulation No. 7, entitled ''Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene as a Solvent,'' which had previously regulated dry-cleaning plants as a source of VOCs contributing to the formation of tropospheric ozone. This is acceptable to EPA as States have the option to exclude from control those VOC compounds that EPA has found to be negligibly reactive. See, e.g., 61 FR 4588, 4590, February 7, 1996.

EPA notes, however, that perchloroethylene is listed as a hazardous air pollutant (HAP) under section 112(b) of the Act. Pursuant to section 112(d) of the Act, EPA issued national emission standards for hazardous air pollutants (NESHAPs) for two major perchloroethylene source categories: perchloroethylene dry cleaning (58 FR 49354, September 22, 1993) and halogenated solvent cleaning (59 FR 61801, December 2, 1994). Currently, the use of perchloroethylene in dry-cleaning plants is regulated as a HAP in Colorado. The provisions to address this HAP are found in 40 CFR part 63, subpart M, ''National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities,'' which were incorporated by reference by Colorado into its Regulation No. 8 on December 21, 1995.

D. Procedural Requirements for SIP Revisions

We also find that the State met the applicable public participation requirements of sections 110(a)(2) and 110(l) of the Act in the adoption and submittal of these SIP revisions. Sections 110(a)(2) and 110(l) of the Act provide that each revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing.

Specifically, Colorado held a public hearing on December 21, 1995 on the revisions to Regulations No. 3 and 7 and the Common Provisions Regulation regarding the State's definition of negligibly reactive VOCs, after providing thirty days of public notice. On June 20, 1996, Colorado held a public hearing on the clarification to the definition of ''applicable requirement'' and the correction of typographical errors in Regulation No. 3, after providing thirty days of public notice. Both of these regulatory revisions were submitted by the Governor for approval on September 16, 1997.

On November 21, 1996, Colorado held a public hearing on the revisions to the Common Provisions Regulation and Regulation No. 7 regarding perchloroethylene, after providing thirty days of public notice. This regulation revision was submitted by the Governor for approval on August 19, 1998.

We did not issue a completeness or incompleteness finding for these revisions to the SIP. Thus, pursuant to section 110(k)(1)(B) of the Act, these submittals were deemed complete by operation of law on March 22, 1998 and on January 20, 1999, respectively.

IV. What Are the Administrative Requirements Associated With This Action?

A. Executive Order 12866

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

B. Executive Order 12875

Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds

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

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

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 affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law (sections 13–25–126.5, 13–90–107, and 25–1–114.5 Colorado Revised Statutes (C.R.S.); S.B. 94–139, effective June 1, 1994) or its impact upon any approved provision in the SIP, including the submittal at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A State audit privilege and immunity law can affect only State

enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 114, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State Plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a State audit privilege or immunity law.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

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

PART 52—[AMENDED]

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

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

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(87) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(87) On September 16, 1997, the Governor of Colorado submitted revisions to Regulations No. 3 and 7 and the Common Provisions Regulation to update the State's list of negligibly reactive volatile organic compounds (VOCs) and to consolidate the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. The Governor also submitted revisions to Parts A and B of Regulation No. 3 on September 16, 1997 to amend the definition of ''applicable requirement'' and to correct typographical errors. On August 19, 1998, the Governor submitted revisions to the Common Provisions Regulation to update its list of negligibly reactive VOCs. The Governor also submitted revisions to Regulation No. 7 to repeal the requirements for control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent.

(i) Incorporation by reference.

(A) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definition of ''negligibly reactive VOCs (NRVOCs)'' and subsection h. of the definition of ''net emissions increase,'' adopted 12/21/95, effective 3/1/96.

(B) Regulation No. 3, ''Air Contaminant Emission Notices,'' 5 CCR 1001–5, adopted 12/21/95, effective 3/1/96, as follows: Part A, subsection h. of the definition of ''net emissions increase'' in Section I.B.37.; and Part B, Section IV.D.4.

(C) Regulation No. 7, ''Emissions of Volatile Organic Compounds,'' 5 CCR 1001–9, Section II.B., adopted 12/21/95, effective 3/1/96.

(D) Regulation No. 3, ''Air Contaminant Emission Notices,'' 5 CCR 1001–5, adopted 6/20/96, effective 8/30/96, as follows: Part A, definition of ''applicable requirement'' in Section I.B.9., definition of ''major source (for the purposes of Part C—operating permits)'' in Section I.B.59., and Section V.C.12; and Part B, Section III.D.2.

(E) Common Provisions Regulation, 5 CCR 1001–2, Section I.G., definition of ''negligibly reactive VOCs (NRVOCs)'' adopted 11/21/96, effective 1/30/97.

(F) Regulation No. 7, ''Emissions of Volatile Organic Compounds,'' 5 CCR 1001–9, Section XII., adopted 11/21/96, effective 1/30/97.

[FR Doc. 99–15161 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA121–4088a; FRL–6361–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 1990 NO_X Base Year Emission Inventory for the Philadelphia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision request that the Commonwealth of Pennsylvania submitted on July 31, 1998 for the Philadelphia severe ozone nonattainment area. The Commonwealth submitted this SIP revision in response to the Clean Air Act, which requires all ozone nonattainment areas to submit a comprehensive inventory of oxides of nitrogen (NO_X) emissions, from all sources, for the calendar year 1990. This emission inventory is known as the 1990 base year inventory. This SIP revision applies to the Pennsylvania portion of the Philadelphia ozone nonattainment area, which consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. EPA is approving the 1990 NO_X base year inventory as a revision to Pennsylvania's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 16, 1999, without further notice, unless EPA receives adverse written comment by July 19, 1999. If EPA receives such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You can inspect copies of the documents relevant to this action during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or via e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is EPA taking today?
What is the effect of this action?
What did Pennsylvania submit?
What is in Pennsylvania's 1990 NO_X inventory?
What does the Clean Air Act require?
Where can I get more information?
What is EPA doing in this action?
How does this document comply with the federal administrative requirements for rulemaking?

What Action Is EPA Taking Today?

EPA is approving the 1990 NO_X base year emission inventory, submitted by the Commonwealth of Pennsylvania for the Pennsylvania portion of the Philadelphia ozone nonattainment area. The inventory revision concerns NO_X emissions from point, area, highway mobile, and non-road mobile biogenic emissions in the five-county Philadelphia area.

What Is the Effect of This Action?

EPA's approval of Pennsylvania's 1990 NO_X base year inventory means that Pennsylvania has met this Clean Air Act requirement for the Philadelphia area. For more information, see the section entitled, ''What Does the Clean Air Act Require?''

What Did Pennsylvania Submit?

On July 31, 1998, Pennsylvania submitted a revision to the Pennsylvania State Implementation Plan (SIP) containing the 1990 NO_X base year inventory for the Philadelphia severe ozone nonattainment area and the ''Phase I'' rate-of-progress plan for the Philadelphia area. The Pennsylvania portion of the Philadelphia ozone nonattainment area includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. Today's action only pertains to the 1990 NO_X base year inventory portion of Pennsylvania's July 31, 1998 submittal. In a separate rulemaking action, EPA will address the remainder of Pennsylvania's July 31, 1998 submittal related to the Philadelphia area Phase I plan.

What Is in Pennsylvania's 1990 NO_X Inventory?

The following table contains a summary of the NO_X emission inventory, broken down by source type and county.

1990 BASE YEAR NO_X Emissions for the Philadelphia Area

[Tons per summer day (tpsd)]

County	Point	Area	Highway	Nonroad	Total
Bucks	15.96	5.36	32.16	13.09	66.57
Chester	26.97	2.84	25.98	11.25	67.04
Delaware	65.51	7.45	18.44	9.23	100.63
Montgomery	7.67	9.13	39.50	20.69	76.99
Philadelphia	45.79	22.34	42.24	17.94	128.31
Five-County Area	161.90	47.12	158.32	72.20	439.54

What Does the Clean Air Act Require?

Under the Clean Air Act (the Act), States have the responsibility to inventory emissions contributing to national ambient air quality standard nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Section 182(a)(1) of the Act requires states containing ozone nonattainment areas classified as marginal to extreme to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990, and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of VOC, NO_X, and carbon monoxide (CO) emissions. The inventory is to address actual VOC, NO_X, and CO emissions for the area during peak ozone season, which is generally comprised of the summer months. All emissions from stationary point and area sources, as well as highway and non-road mobile sources, and biogenic emissions within the nonattainment area, are to be included in the compilation. The 1990 base year emissions inventory is the primary inventory from which other Clean Air Act requirements, including the periodic inventory, the rate-of-progress (ROP) target level and projection inventories, and the modeling inventory, are derived.

Where Can I Get More Information?

EPA prepared a technical support document (TSD) for this rulemaking. You may request a copy of EPA's TSD from the EPA Regional Office listed in the **ADDRESSES** section, above.

You can find more information about emission inventories in the following documents:

Emission Inventory Requirements for Ozone State Implementation Plans, Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate of Progress Plans, Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, October 1992.

Guidance on the Post '96 Rate-of-Progress Plan (RPP) and Attainment Demonstration (Corrected version of February 18, 1994), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, February 18, 1994.

What Is EPA Doing in This Action?

EPA is approving Pennsylvania's 1990 NO_X emission inventory for the Philadelphia area. Pennsylvania submitted this inventory to EPA as a SIP revision on July 31, 1998.

How Does This Document Comply With the Federal Administrative Requirements for Rulemaking?

A. Executive Order 12866

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

B. Executive Order 12875

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

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

C. Executive Order 13045

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

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, 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 and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to EPA's approval of Pennsylvania's 1990 NOx base year inventory for the five-county Philadelphia area, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 2, 1999.

Thomas J. Maslany,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2036 is amended by adding paragraph (l) to read as follows:

§ 52.2036 1990 Baseyear Emission Inventory.

* * * * *

(l) EPA approves, as a revision to the Pennsylvania State Implementation Plan, the 1990 NOx emission inventory for the Philadelphia area, submitted on July 31, 1998 by the Pennsylvania Department of Environmental Protection. The submittal consists of 1990 base year point, area, highway, and non-road mobile NOx emissions inventories for the five-county Philadelphia area (Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties).

[FR Doc. 99–15267 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 070–1070a; FRL–6359–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the state of Iowa's section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators (HMIWIs). The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA). The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

DATES: This direct final rule is effective on August 16, 1999 without further notice, unless EPA receives adverse comment by July 19, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Information regarding this action is presented in the following order:

What are the requirements of section 129 of the CAA?
What is a section 111(d) state plan?
What is Subpart Ce?
What are the requirements for the HMIWI state plan?
What is contained in the Iowa state plan?
What are the approval criteria for the state plan?

What Are the Requirements of Section 129 of the CAA?

Section 129 of the CAA Amendments of 1990 requires EPA to set air emission standards and emission guidelines (EG) under the authority of section 111 of the CAA to reduce pollution from incinerators that burn solid waste. Incinerators that burn medical waste are classified as solid waste incinerators and therefore must be regulated.

What Is a Section 111(d) State Plan?

Section 111(d) of the CAA, ''Standards of Performance For New Stationary Sources,'' authorizes EPA to set air emissions standards for certain categories of sources. These standards are called new source performance standards (NSPS). Once an NSPS is promulgated, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a state plan to adopt the EG into its body of regulations and submit it to EPA for approval. The state plan is called a 111(d) plan.

What Is Subpart Ce?

EPA issued regulations to reduce air pollution from incinerators that are used to burn hospital waste and/or medical/infectious waste. The NSPS at 40 CFR Part 60, Subpart Ec, and EG, Subpart Ce, were promulgated by EPA on September 15, 1997 (62 FR 48374). These rules apply to new and existing incinerators used by hospitals and health care facilities, as well as to incinerators used by commercial waste disposal companies to burn hospital waste and/or medical/infectious waste. The EG applies to existing HMIWIs that commenced construction on or before June 20, 1996.

The Subpart Ce EG is not a direct Federal regulation but is a ''guideline'' for states to use in regulating existing HMIWIs. The EG requires states to submit for EPA approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWI.

What Are the Requirements for the HMIWI State Plan?

A section 111(d) state plan submittal must meet the requirements of 40 CFR Part 60, Subpart B, sections 60.23 through 60.26, and 40 CFR Part Ce. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements. The technical requirements for HMIWI sources are contained in Subpart Ce. A state will generally address the HMIWI technical requirements by adopting by reference Subpart Ce. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, i.e., by September 15, 1998.

Prior to submittal to EPA, the state must make available to the public the state plan and provide opportunity for public comment. If a state fails to have an approvable plan in place by September 15, 1999, sources will be subject to a Federal plan on that date.

What Is Contained in the Iowa State Plan?

The state of Iowa submitted its section 111(d) state plan to EPA for approval on February 11, 1999. The state adopted the NSPS by reference into state Rule 23.1(2)''ttt'' and the EG requirements into Rule 23.1(5)''b'' effective December 23, 1998. The section 111(d) state plan contains:

1. A demonstration of the state's legal authority to implement the section 111(d) state plan.
2. State Rule 23.1(5)''b'' as the enforceable mechanism.
3. An inventory of sources in Table 1.
4. An emissions inventory in Table 2.
5. Emission limits that are as protective as the EG.
6. A compliance date 36 months after the effective date of the Federal approval of this state plan or a final compliance date not later than September 15, 2002.
7. Testing, monitoring, and inspection requirements.
8. Reporting and recordkeeping requirements for the designated facilities.
9. Operator training and qualification requirements.
10. Requirements for the development of waste management plans.
11. A record of the public notice and hearing requirements.

12. Provisions for progress reports to EPA.

13. Title V permit application due date.

14. A final compliance date not later than three years after approval of the state plan or September 15, 2002, whichever is earlier.

What Are the Approval Criteria for the State Plan?

The state plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, Subpart B, ''Adoption and Submittal of State Plans for Designated Facilities,'' and 40 CFR 60, 60.30e through 60.39e, Subpart Ce, ''Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.'' A detailed discussion of our evaluation of the state plan is included in our technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The state plan meets all of the applicable approval criteria.

Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, we are approving Iowa's January 29, 1999, section 111(d) state plan for the control of HMIWI emissions, except for those facilities located in Indian country. Any facilities located in Indian country will be subject to a Federal plan. In Iowa there are no known HMIWIs in Indian country.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 16, 1999 without further notice unless the Agency receives adverse comments by July 19, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 16, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, a summary of 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 elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. E.O. 13045

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

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to 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 officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan 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.

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated 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 preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 1, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

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

Subpart Q—Iowa

2. Subpart Q is amended by adding § 62.3914 and an undesignated center heading to read as follows:

Air Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators

§ 62.3914 Identification of plan.

(a) Identification of plan. Iowa plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Iowa Department of Natural Resources on January 29, 1999.

(b) Identification of sources. The plan applies to existing hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996.

(c) Effective date. The effective date of the plan is August 16, 1999.

[FR Doc. 99–15165 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX–108–1–7408a; FRL–6361–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the Governor of Texas on November 3, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Municipal Solid Waste (MSW) Landfills. The EG require States to develop plans to collect landfill gas from large MSW landfills.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless we receive adverse comments by July 19, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Texas Natural Resource Conservation Commission offices, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

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I. What Action Is Being Taken by EPA Today?

We are approving the Texas State Plan to control landfill gas from existing MSW landfills, as submitted to us by Texas on November 3, 1998. This State Plan does not affect those existing MSW landfills located in Indian Country.

We are publishing this action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective August 16, 1999, unless by July 19, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective August 16, 1999.

II. Why Do We Need To Regulate Landfill Gas?

Landfill gas contains a mixture of volatile organic compounds (VOCs), other hazardous air pollutants (HAPs), and methane. These VOC emissions can contribute to ozone formation, which can cause adverse health effects to humans and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. We presented our concerns with the health and welfare effects of landfill gases in the preamble to our proposed EG (56 FR 24468, May 30, 1991).

III. What Is Being Acted on in This Document?

When we developed our New Source Performance Standard (NSPS) for landfills, we also developed EG to control landfill gas from older landfills (See 61 FR 9905–9944, March 12, 1996). The Texas Natural Resource Conservation Commission (TNRCC) developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

IV. What Is a State Plan?

Section 111(d) of the Act requires that ''designated'' pollutants controlled under the NSPS must also be controlled at existing sources in the same source category. To ensure proper implementation of the requirements of section 111(d), we approved 40 CFR part 60, subpart B (40 FR 53340, November 17, 1975). Subpart B provides that, once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from designated (existing) facilities. Affected States must then adopt the EG into their body of regulations.

V. What Does the Texas State Plan Contain?

The Texas State Plan was reviewed for approval against the following criteria: 40 CFR Part 60, §§ 60.23 through 60.26, subpart B—Adoption and Submittal of State Plans for Designated Facilities; and, 40 CFR part 60, §§ 60.30c through 60.36c, subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

The evaluation of the Texas State Plan indicates that it contains:

1. a demonstration of the State's legal authority to implement the section 111(d) State Plan, as authorized under the Texas Clean Air Act Sections 382.011, 382.012, and 382.017;
2. an incorporation of the Federal regulations into the Texas Administrative Code (TAC) at 30 TAC Chapter 113, Subchapter D, Sections 113.2060, Definitions; 2061, Standards for Air Emissions; 2067, Exemptions; and 2069, Compliance Schedule;
3. an inventory of approximately 113 known designated facilities, with estimated design capacities, as listed in Tables 4, 5a, and 5b of the State Plan;
4. emission limits that are as stringent as the EG, listed in TAC Section 113.2061;
5. a process to review gas collection system design plans;
6. a final compliance date 30 months after the date a designated facility reaches or exceeds 50 Mg of NMOC emissions annually;
7. testing, monitoring, reporting and recordkeeping requirements for the designated facilities, as listed in TAC Section 113.2061;
8. records from the three public hearings; and,
9. provisions for progress reports to EPA.

The Texas State Plan does deviate from the EG on two issues. The EG defines designated facilities as those that have accepted waste after November 8, 1987. The TNRCC provided a detailed technical analysis which indicates that no designated landfills which closed between November 8, 1987, and October 9, 1993, will have estimated non-methane organic compounds (NMOC) emissions above the 50 megagram (Mg) control threshold by the year 2000. Controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost to install gas collection systems at these sites. Our Code of Federal Regulations (CFR), at 40 CFR § 60.24(f), allows for less stringent regulations if a technical or economic justification supports it. Based on § 60.24(f), the TNRCC adjusted its definition to reflect actual conditions in Texas. The definition of MSW landfills in Texas then includes facilities that have accepted waste since November 8, 1987, and either closed after October 8, 1993, or are currently still accepting waste. We agree with the justification for excluding this group of MSW landfills from the State Plan, and accept the State's use of § 60.24(f) to change its definition of MSW landfills in Texas.

Second, the Texas State Plan does not include specific increments of progress towards the final 30 month compliance date, as discussed in 40 CFR 60.24(e)(1). However, the State can develop separate increments of progress for each designated facility and submit these as revisions to the State Plan within a year of the Federal approval of the Texas State Plan (40 CFR 60.24(e)(2)). For this reason we can approve the State Plan in its current form. We fully expect the TNRCC to submit increments of progress within a year of our approval of this State Plan. Please request a copy of our official file to review our detailed discussion of the requirements of the NSPS and EG, along with our evaluation of the Texas State Plan.

VI. How Can I Determine Whether My Landfill Is Subject to These Regulations?

Any MSW landfill which began construction, reconstruction or modification before May 30, 1991, and has accepted waste at any time since October 9, 1993, is affected by the EG and the Texas State Plan. If your facility meets these two criteria, your landfill is subject to these regulations.

VII. What Steps Do I Need To Take?

- You must report your landfill's design capacity to the TNRCC within 90 days of the effective date of our approval of the Texas State Plan (See Section 113.2069).
- If your landfill has a design capacity above 2.5 million Mg, you must also estimate and report your annual NMOC emission rate to the TNRCC within the same 90-day timeframe (See Section 113.2069).
- If your landfill has a design capacity below 2.5 million Mg, you have met all the requirements of the Texas State Plan. However, if you modify your landfill and increase the design capacity above the 2.5 million Mg threshold, you must submit an amended design capacity report to the TNRCC within 90 days of the modification. You must also estimate and submit your annual NMOC emission rate to the TNRCC within 90 days of the modification (Section 113.2061). Your landfill will then be considered an NSPS source and subject to the requirements listed under 40 CFR part 60, subpart WWW.
- You must have a gas collection system installed and operating within 30 months of the date you project to be at or above the 50 Mg threshold (Section 113.2061).
- You must record and keep accurate records regarding site information and

gas collection system operational data (Section 113.2061).

VIII. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to 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 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 rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (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.

The 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 final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

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 those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the 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 officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility Act

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 final rule will not have a significant impact on a substantial number of small entities because approvals under section 111 of the Federal Clear Air Act (the Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See 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, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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 can not 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 August 16, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 62.10850 is amended by adding paragraph (b)(3) to read as follows:

§ 62.10850 Identification of plan.

* * * * *

(b) * * *

(3) Control of landfill gas emissions from existing municipal solid waste landfills, submitted by the Governor on November 3, 1998.

* * * * *

3. Subpart SS is amended by adding a § 62.10880 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10880 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since October 8, 1993, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–15265 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[LA–51–7413a; FRL–6360–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the Louisiana Department of Environmental Quality (LDEQ) on December 30, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (MWI). The EG requires States to develop plans to reduce toxic air emissions from all MWIs. We are also approving a revision to the Louisiana State Plan as it pertains to existing municipal solid waste landfills. This revision adds certain increments of progress so that we can more effectively track facilities' progress towards compliance.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless we receive adverse comments by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Louisiana Department of Environmental Quality offices, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

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VII. Administration Requirements.

I. What Action Is Being Taken by EPA Today?

We are approving the Louisiana State Plan, as submitted on December 30, 1998, for the control of air emissions from MWIs, except for those MWIs located in Indian Country. When we developed our New Source Performance Standard (NSPS) for MWIs, we also developed EG to control air emissions from older MWIs. See 62 FR 48348–48391, September 15, 1997. The LDEQ developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We approved Louisiana's section 111(d) State plan for municipal solid waste landfills on August 29, 1997 (62 FR 45730). In accordance with our EG for this category of sources, LDEQ is allowed to develop increments of progress separately and submit them as a revision to the State Plan. Our detailed discussion of this requirements was discussed in 62 FR 45730.

1. Design plans are due on or before January 28, 1999;

2. Awarding of contracts is due on or before June 28, 1999;

3. Initiation of on-site construction is due on or before March 28, 2000;

4. Initial performance tests must be completed on or before March 28, 2000;

5. Final compliance must be met on or before April 28, 2000. These increments of progress satisfy the requirements of the EG for municipal solid waste landfills, and we are approving them today as a revision to the State Plan.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective August 16, 1999, unless by July 19, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public

comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective August 16, 1999.

II. Why Do We Need To Regulate MWI Emissions?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, and toxic metals (lead, cadmium, and mercury). Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occurs mainly through the ingestion of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucination and impair consciousness. Long-term exposure to mercury in certain form can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also effect the immune system. We estimate that this State Plan will reduce mercury emissions from MWIs in Louisiana by approximately 94 percent, hydrochloric acid emissions by 98 percent, and dioxin/furan emissions by 95 percent.

III. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to enforce it.

IV. What Does the Louisiana State Plan Contain?

The LDEQ adopted the Federal NSPS and EG by reference into its State regulations at LAC 33:III.3003.B, Table 2, and LAC 33:III.3003 C5, as State Rule AQ 178. AQ 178 was published in the *Louisiana Register* on December 20, 1998. The Louisiana State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. State Rule AQ 178 as the enforceable mechanism;
3. An inventory of approximately 56 known designated facilities, along with estimates of their toxic air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date 30 months after the effective date of the Federal approval of this State Plan;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing; and,
8. Provisions for progress reports to EPA.

The Louisiana State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR Part 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* A detailed discussion of our evaluation of the Louisiana State Plan is included in our technical support document, located in the official file for this action.

V. Is My MWI Subject to These Regulations?

The EG for existing MWIs affect any MWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

VI. What Steps Do I Need To Take?

You must meet the requirements incorporated by reference in LAC 33:III.3003.B and C5, and summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity; as an alternative, you can elect to accept a permit restriction to limit the amount of waste you may burn per hour.
2. Each size category of MWI has certain emission limits established which your incinerator must meet. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. See 40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997.
3. There are provisions to address small rural incinerators. See 40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997.
4. You must meet a 10 percent opacity limit on your discharge, averaged over a six-minute block. See 40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997.
5. You must have a qualified MWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR 60.53c(c). See 40 CFR 60.34e, as listed at 62 FR 48380.
6. Your operator must be certified, as discussed in 4 above, no later than one year after we approve this Louisiana State Plan. See 40 CFR 60.39e(e), as listed at 62 FR 48382. You must develop and submit to LDEQ a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to LDEQ no later than one year after we approve this State Plan. See 40 CFR 60.35e, as listed at 62 FR 48380.
7. You must conduct an initial performance test to determine your incinerators compliance with these emission limits. See 40 CFR 60.37e and 60.8, as listed at 62 FR 48380.
8. You must install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec. See 40 CFR 60.37e(c), as listed at 62 FR 48381.
9. You must document and maintain information concerning pollutant

concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years. See 40 CFR 60.38e, as listed at 62 FR 48381.

10. You must report to LDEQ the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager. See 40 CFR 60.38e, as listed at 62 FR 48381.

11. In general, you must comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date. See 40 CFR 60.39e, as listed at 62 FR 48381.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to 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 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 rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection in 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.

The 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 final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

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 those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the 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 officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility Act

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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Federal Clear Air Act (the Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See 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, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rue 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 promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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 can not 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 August 16, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart T—Louisiana

2. Section 62.4620 is amended by revising paragraph (b)(4) and adding paragraphs (b)(5), (c)(5), and (c)(6) to read as follows:

§ 62.4620 Identification of plan.

* * * * *

(b) * * *

(4) Control of landfill gas emissions from existing municipal solid waste landfills, submitted on December 9, 1996 (LAC 33.III.3003.B, Table 2), and revised on December 20, 1998 (LAC 33.III.3003.C.4).

(5) Control of air emissions from designated hazardous/medical/infectious waste incinerators, submitted by the Louisiana Department of Environmental Quality on December 30, 1998 (LAC 33.III.3003.C.5).

(c) * * *

(5) Municipal solid waste landfills.

(6) Hazardous/medical/infectious waste incinerators.

3. Subpart T is amended by adding a new § 62.4633 and a new undesignated center heading to read as follows:

Air Emissions From Hazardous/ Medical/Infectious Waste Incinerators

§ 62.4633 Identification of sources.

The plan applies to existing hazardous/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

4. Subpart T is amended by adding anew § 62.4634 and a new undesignated center heading to read as follows:

Effective Date

§ 62.4634 Effective date.

The effective date for the portion of the plan applicable to existing hazardous/medical/infectious waste incinerators is August 16, 1999.

[FR Doc. 99–15263 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[ND–001a; FRL–6360–3]

Clean Air Act Full Approval of Operating Permit Program; State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating full approval of the operating permit program submitted by the State of North Dakota. North Dakota's operating permit program was submitted for the purpose of meeting the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless EPA receives adverse comment by July 19, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58504–5264.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, EPA, Region 8, (303) 312–6435.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act (''the Act'') as amended (42 U.S.C. 7401 *et seq.*), EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act directs states to develop and submit operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. § 7661a) and the part 70 regulations, which together outline criteria for

approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. The State of North Dakota was granted final interim approval of its program on July 7, 1995 (see 60 FR 35335) and the program became effective on August 7, 1995. Interim approval of the North Dakota program expires on June 1, 2000.

II. Final Action

A. Analysis of State Submission

The Governor of North Dakota submitted an administratively complete Title V operating permit program for the State of North Dakota on May 11, 1994. This program, including the operating permit regulations (Chapter 33–15–14–06 of the North Dakota Administrative Code (NDAC)), substantially met the requirements of part 70. EPA deemed the program administratively complete in a letter to the Governor dated June 28, 1994. The program submittal included a legal opinion from the Attorney General of North Dakota stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the State would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration.

EPA's comments noting deficiencies in the North Dakota program were sent to the State in a letter dated December 22, 1994. The deficiencies were segregated into those that require corrective action prior to interim program approval, and those that require corrective action prior to full program approval. The State committed to address the program deficiencies that require corrective action prior to interim program approval in a letter dated January 5, 1995. The State submitted these corrective actions in letters dated February 22, March 20, and June 13, 1995. EPA reviewed these corrective actions and determined them to be adequate to allow for interim program approval.

In letters dated September 28, 1998 from the Governor of North Dakota and October 6, 1998 from the Chief of the Environmental Health Section, North Dakota Department of Health, the State submitted revisions to its Air Pollution Control Rules, including its operating permit program regulations (Chapter 33–15–14–06) that were effective January 1, 1996, September 1, 1997, and September 1, 1998. On March 11, 1999, the State submitted a copy of an amendment to section 23–25–10 of the North Dakota Century Code (NDCC) related to air pollution penalties. The effective date of the March 11, 1999 statutory amendment is August 1, 1999. The revised program regulations and statutory amendment adequately address the problems identified in the July 7, 1995 **Federal Register** notice as requiring corrective action prior to full program approval. The State also submitted evidence of proper adoption of the revisions to its program regulations.

Areas in the North Dakota program that were identified by EPA as deficient and the State's corrective actions for full program approval consist of the following:

(1) EPA required the State to revise NDAC § 33–15–14–06.4.c to lower the insignificant emission unit threshold for criteria pollutants to more reasonable levels. The correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(2) EPA advised the State that, in order to implement NDAC § 33–15–14–06.5.a.(1)(c), the State must adopt specific provisions to determine that an alternative emission limit is equivalent to a limit in North Dakota's state implementation plan (SIP), and EPA must approve the provisions as part of the SIP. Until a SIP revision could be accomplished, EPA requested the State to delete the words ''or this article'' from the first line of NDAC § 33–15–14–06.5.a.(1)(c). This request was met when the State revised the North Dakota Air Pollution Control Rules, effective January 1, 1996.

(3) EPA required the State to revise NDAC § 33–15–14–06.5.a.(11) to allow changes in emissions provided that they are not modifications under Title I of the Act and the changes do not exceed the emissions allowed under the permit. This correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(4) EPA required the State to revise NDAC § 33–15–14–06.5.f(1) to read ''* * * the department shall include in a title V permit to operate a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. * * *'' This correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(5) EPA required the State to delete ''or this article'' from NDAC § 33–15–14–06.5.a.(8), and ''this article'' from § 33–15–14–06.5.a.(10) and § 33–15–14–06.6.e.(1)(a)[2], to clarify that, in order to implement those provisions, the State must have an economic incentive, marketable permits, or a generic emissions trading program approved in its SIP. This correction was completed in the revised North Dakota Air Pollution Control Rules, effective January 1, 1996.

(6) EPA required the State to augment the Attorney General's opinion to show that the provisions for judicial review in North Dakota Century Code (NDCC), Sections 28–32–14 and 15 and in NDAC Article 33–22 are the exclusive means for obtaining judicial review of the terms and conditions of permits and that petitions for judicial review must be filed within the 90-day periods discussed in 40 CFR 70.4(b)(3)(xii). Or, if such an opinion could not be rendered, the State was required to change its statutes or regulations to ensure that the requirements of 40 CFR 70.4(b)(3)(xii) are met. This correction was completed in Section 33–15–14–06.8. of the revised North Dakota Air Pollution Control Rules, effective September 1, 1998.

(7) The State was required to augment the Attorney General's opinion to show how, under State law, applicants may obtain judicial review in cases of State inaction, consistent with the requirements of 40 CFR 70.4(b)(3)(xi). Or, if such an opinion could not be rendered, the State was required to change its statutes or regulations to ensure that the requirements of 40 CFR 70.4(b)(3)(xi) are met. This correction was completed in 33–15–14–06.8 of the revised North Dakota Air Pollution Control Rules, effective September 1, 1998.

(8) EPA raised the issue that North Dakota's Title V program did not appear to be consistent in all respects with 40 CFR 70.11, in particular with the requirement of maximum fines of not less than $10,000 per day per violation. Specifically, North Dakota's statutory penalty provision for violation of air pollution control requirements set the penalty at ''not more than ten thousand dollars (or imprisonment for not more than six months, or both) for knowingly making a false statement, representation or certification in any application or report required under the state air pollution control statute (chapter 23–25), or for falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method'' (NDCC § 23–25–10.3). It was not clear that the penalty was authorized per day of

violation. To address this ambiguity, North Dakota enacted amendments to NDCC § 23–25–10 to specifically prohibit the making of false statements or the falsifying of monitoring device or methods required to be maintained under the State statute or under any permit condition, rule, order, limitation, or other applicable requirement implementing the State statute. Section 23–25–10, as amended, states that, upon conviction, a violator is subject to a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than six months, or both. The amended Section 23–25–10 is effective August 1, 1999.

C. Final Action

The EPA is granting full approval of the North Dakota operating permit program.

In the North Dakota Title V program submittal of May 11, 1994, Section II.B. (Program Description: Organizational Structure) states ''At this time, the Department will operate the program for the entire State, excluding Indian Reservations.'' In this notice, EPA is approving North Dakota's part 70 program for all areas within the State except the following: any sources of air pollution located in ''Indian Country'' as defined in 18 U.S.C. 1151, including the Fort Berthold, Fort Totten, Standing Rock, Sisseton and Turtle Mountain Indian Reservations, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the Act; see also 59 FR 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

The EPA is publishing this rule without prior proposal because the State is currently implementing its part 70 program and the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the operating permit program submitted by the State of North Dakota should adverse comments be filed. This rule will be effective August 16, 1999, without further notice unless the Agency receives adverse comments by July 19, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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

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

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

This final rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore,

because this 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.

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. In appendix A to part 70 the entry for North Dakota is amended by adding paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

North Dakota

* * * * *

(b) The North Dakota Department of Health, Environmental Health Section, submitted an operating permits program on May 11, 1994; interim approval effective on August 7, 1995; revised January 1, 1996, September 1, 1997, September 1, 1998, and August 1, 1999; full approval effective on August 16, 1999.

* * * * *

[FR Doc. 99–15269 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 244

[FRL–6362–4]

Solid Waste Programs; Management Guidelines for Beverage Containers; Removal of Obsolete Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing 40 CFR part 244, Solid Waste Management Guidelines for Beverage Containers, from the Code of Federal Regulations (CFR) because it is obsolete. The activities addressed in these 1976 guidelines have been included in numerous state and local statutes and regulations and other federal rules, or have been superseded by such Presidential actions as Executive Order 12873 as amended by Executive Order 13101. Deleting these guidelines from the CFR will have no measurable impact on solid waste management.

EFFECTIVE DATE: This final rule takes effect on July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Gallman (703) 308–7276, U.S. EPA, Office of Solid Waste and Emergency Response, 401 M Street, SW, (5306W), Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. The Environmental Protection Agency (EPA) conducted a review of all its rules, including rules issued under the Resource Conservation and Recovery Act (RCRA). Based on the review, EPA is today removing 40 CFR part 244 guidelines from the CFR.

On December 31, 1996, EPA published a direct final rule (61 FR 69032) removing from the CFR two guidelines pertaining to solid waste management which are obsolete, 40 CFR parts 244 and 245. EPA noted at that time that if adverse comments were received, it would withdraw the direct final rule and address the comments received in a subsequent final rule. Because EPA received adverse comments with respect to the removal of 40 CFR part 244, Solid Waste Management Guidelines for Beverage Containers, the direct final rule for part 244 was withdrawn on May 2, 1997 (62 FR 24051). EPA subsequently reviewed all comments and is addressing them in this final rule. No adverse comments were received on the removal of part 245 and that final rule was effective on December 31, 1997 (63 FR 683).

II. Background

On September 21, 1976, EPA issued guidelines, 40 CFR part 244 (Solid Waste Management Guidelines for Beverage Containers), for federal

agencies for reducing beverage container waste. The guidelines were mandatory (although not enforceable) for federal facilities and recommended for adoption by state and local governments and private agencies. EPA intended these guidelines to achieve a reduction in beverage container solid waste and litter, resulting in savings in waste collection and disposal costs to the federal government. The Agency also intended these guidelines to achieve the conservation and more efficient use of energy and material resources through the development of effective beverage distribution and container collection systems. EPA hoped that the guidelines would achieve these goals by making all beverage containers on federal facilities returnable and encouraging reuse or recycling of the returned containers. To accomplish the return of a beverage container, a deposit of at least five cents on each returnable beverage container was to be paid upon purchase by the consumer and refunded to the consumer when the beverage container was returned for reuse or recycling. The guidelines allow federal agencies to cease implementation of the provisions in various situations where the requirements are not practical.

EPA believed these guidelines would be important because, when these guidelines were promulgated in 1976, there were few requirements for recycling beverage containers or other materials. In fact, EPA has found no evidence to suggest that federal agencies developed beverage container programs in response to the guidelines. Instead, federal agencies have met the challenge of recycling by implementing, in-house or by contract, programs for collection of a variety of recyclable materials, including beverage containers. Many state and local governments now require or encourage such collection programs. Under RCRA section 6001, federal facilities must meet such municipal or state recycling requirements. Furthermore, in 1993, President Clinton issued Executive Order 12873, ''Federal Acquisition, Recycling, and Waste Prevention'', which was amended in 1998 by Executive Order 13101, ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.'' Section 705 of the Executive Order requires each Executive agency that has not already done so to initiate a program to promote cost effective waste prevention and recycling of reusable materials in all of its facilities. Recycling programs implemented pursuant to section 705 must be compatible with applicable state and local government programs to promote recycling and waste reduction in the community. Agencies must designate a recycling coordinator for each facility or installation. The recycling coordinator must implement or maintain waste prevention and recycling programs in the agencies' action plans. Executive agencies must also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

III. Analysis of and Response to Public Comments on Removal of 40 CFR Part 244

EPA invited public comment on the proposed removal of part 244 during a 60-day period and received 13 comments. Nine of the comments received opposed EPA's action, while four offered support for removing part 244. This section presents the findings of EPA's follow-up research pertinent to each major comment. General comments opposed to EPA's action are discussed first, followed by those in support.

A. Comments Opposed to Removal of Part 244

Most of the comments opposed to removal of 40 CFR part 244 focused on similar issues. In general, commenters felt that the beverage deposit guidelines for federal facilities should be continued and strengthened, rather than withdrawn. A summary of these comments and EPA's findings that address these comments are provided below.

Comment on Deposit Effectiveness: Nine commenters supported beverage deposit programs in general, while three commenters encouraged deposits as the most effective means of collecting beverage containers at federal facilities and encouraged EPA to strengthen, rather than withdraw, the guidelines.

Findings Addressing This Comment: 40 CFR part 244 does not establish beverage deposit programs in general, but focuses on federal facilities. EPA's decision to withdraw the part 244 beverage containers guidelines should not be viewed as reflecting any position on the adoption of beverage deposit programs by State or local governments. Therefore, this discussion will not cover the merits or drawbacks of beverage deposit programs (often called ''bottle bills'') in general.

EPA, however, has concluded that these specific federal guidelines are obsolete, primarily because they have been supplemented by more comprehensive federal recycling programs and by local and state requirements. When EPA issued part 244 in 1976, there was limited collection of beverage containers for recycling in federal facilities. Since that time, considerable progress has been made to collect and recycle many items, including beverage containers. Recycling collection programs are now required by many state and local governments around the country. Under RCRA Section 6001, federal facilities are required to meet these municipal and state recycling requirements. In addition, in 1993, President Clinton signed Executive Order 12873, ''Federal Acquisition, Recycling, and Waste Prevention'', which was amended in 1998 by Executive Order 13101, ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.'' Section 705 of the Executive Order requires each executive agency to initiate a program to promote cost effective waste prevention and recycling of reusable materials. These programs must be compatible with State and local requirements at all of its facilities. Agencies must designate a recycling coordinator for each facility to implement or maintain programs in the agencies' action plans and must also consider cooperative ventures with State and local governments to promote community programs.

In response to comments, EPA also attempted to gather more complete information on the current extent of collection of beverage containers at federal facilities. While there is no uniform, comprehensive database, there is information on some of the federal collection efforts.

EPA's research shows that, among these federal efforts, both the U.S. General Services Administration (GSA) and Department of Defense (DOD) service branches have active recycling efforts that are providing collection services to a large number of government employees. Facilities owned, operated, and leased by GSA and the military branches comprise the largest portion of federal facilities. In addition, many of these programs include comprehensive and integrated waste reduction and recycling programs, taking an approach that is broader than beverage container recycling alone. With the success of these programs, there is no need for a separate guideline on beverage container collection for federal facilities.

Although DOD does not separately track beverage containers, all military facilities are required to have a solid waste plan and a recycling collection program in place. It is our understanding that the armed services are near 100 percent in compliance with the DOD recycling policy. According to the 1995 DOD Defense Environmental

Quality Program annual report, the armed forces collected approximately 1.7 billion pounds of material for recycling in calender year 1994, exceeding its targeted goal. The report indicates the armed forces surpassed its targeted goal in 1993, as well. In addition, Navy and Marine Corps installations generating more than 1 ton of solid waste per day are required to report every year on the amount of material recycled at each facility. The 1995 Navy and Marine Corps Solid Waste Annual Report documents that the Navy and Marine Corps collected more than 1,800 tons of aluminum cans and more than 3,200 tons of glass for recycling in fiscal year 1995. Overall, the report indicates a steady increase in the amount of materials collected for recycling among the Navy and Marine Corps since fiscal year 1990.

GSA reported an active recycling program that includes each of the agency's 11 regions. More than 530,000 federal employees in more than 1,100 federal buildings nationwide participated in GSA's recycling program in fiscal year 1996. During that year, GSA collected 44,527 tons of recyclables, including beverage containers, mixed paper, plastics, newspaper, and corrugated cardboard. This includes 112 tons of used beverage containers and 359 tons of glass (primarily beverage containers). In addition, GSA received nearly $863,000 from the sale of recovered materials. Employee participation in recycling programs at GSA buildings averaged 60 percent, demonstrating widespread support for recycling.

In the direct final rule, which EPA published on December 31, 1996, the Agency concluded that the part 244 guidelines were obsolete because federal facilities were recycling beverage containers in compliance with E.O. 12873. In addition, EPA determined that the guidelines should be withdrawn because federal facilities were complying with state and local solid waste management statutes and regulations that relate to collection and recycling of beverage containers. 61 FR 69032, 69033. The reports that EPA has obtained from DOD and GSA discussed above verify the conclusions set forth in the direct final and proposed rules.

We have no indication that the beverage container recycling activities at federal facilities as described above are a result of the part 244 guidelines. In fact, after review of agency records described earlier and discussions with federal personnel, we have no information regarding any federal facility which is implementing the full deposit and refund system outlined in part 244.

EPA's research showed a general lack of awareness on the part of key facility personnel regarding the existence of part 244. This is largely the result of the guidelines being over twenty years old and largely superseded by more recent and comprehensive recycling mandates. Some personnel stated they did not feel the provision was necessary because they already have an adequate recycling collection program in place and are making steady progress toward their recycling goals.

EPA's research also found that the logistics of placing a deposit on beverage containers sold within a federal facility and returning that deposit to the consumer would be difficult. DOD recycling officials, for example, noted that implementing a container deposit system would result in complicated and burdensome accounting and management procedures. Returning the deposit may involve additional expenses or oversight on the part of the agency involved, as part 244 requires that the refund be provided at the point of sale whenever possible and, in any event, on the premises of the federal facility. In addition, beverage distributors would be required to place a label or sticker on beverage containers destined exclusively for sale at federal facilities; they might be reluctant to participate in this system without appropriate compensation.

In addition, 40 CFR part 244 exempts federal agencies from implementing the regulation in situations where the requirements are not practical. Therefore, any federal agency that considers the logistical issues mentioned above too difficult and burdensome to implement might consider themselves exempt under this provision given their current successful recycling programs.

For the reasons described above, EPA believes that cost-effective and efficient beverage container recycling programs have now been established at federal facilities. These programs are required by statute and by Executive Order. Thus, we have concluded that rather than seek a means for improving upon or strengthening the pre-existing management guidelines for beverage containers so that federal agencies would implement the guidelines, it is more efficient and will likely be more effective over the long term for federal facilities to seek to improve their current beverage container recycling programs consistent with statutory requirements and Executive Order 13101.

General Comments on Litter Reduction: Several commenters stated that deposits on beverage containers help to reduce litter, and that litter reduction should be a national goal.

Findings Addressing This Comment: EPA considers litter prevention to be a laudable goal and supports programs to educate and inform the public about the benefits of litter reduction and waste prevention. EPA's research shows that voluntary recycling programs at federal facilities have diverted significant quantities of beverage containers and other recyclables from the waste stream. These programs complement the efforts of litter reduction programs. While beverage container deposit systems may also help reduce litter, part 244 focuses on deposit systems at federal facilities, which are principally office buildings. EPA believes that the part 244 deposit requirements are unnecessary for federal facilities for this and the other reasons described in this section.

Comment Regarding Retention and Enforcement of Part 244: According to several commenters, there is a lack of enforcement of 40 CFR part 244.

Findings Addressing This Comment: RCRA section 4005(c)(2)(A) authorizes the Administrator to enforce the prohibition against open dumping in any state that the Administrator has determined has not adopted an adequate program for facilities receiving hazardous household waste (''HHW'') or conditionally exempt small quantity generator (''CESQG'') waste. However, the part 244 solid waste management guidelines pertaining to beverage containers at issue in this rulemaking are not federal criteria for facilities which may receive HHW or CESQG waste that EPA has issued under RCRA sections 4004 or 4010. Nor were the beverage container guidelines intended to be adopted by states as part of a permit program to ensure compliance with such federal criteria. The Agency issued the part 244 guidelines instead under RCRA sections 1008 and 6004. Thus, EPA has no explicit authority in RCRA subtitle D, RCRA sections 1008 and 6004, or part 244 itself to enforce administratively or judicially the beverage container guidelines against federal facilities.

Comment in Support of Retaining Part 244 and Increased Recycling Rates: A commenter stated that without ''bottle bill states,'' the recycling rate for beverage containers would be much less nationally, and that if part 244 was enforced, recycling rates for beverage containers would double and potentially triple current levels at federal facilities in states without bottle bills.

Findings Addressing This Comment: As noted earlier, part 244 does not address ''bottle bill'' programs in general. EPA's research did not find data to address the impact of a beverage deposit container system on beverage container recovery rates at federal facilities. Such an analysis would be complicated by the predominance of office building settings in federal agencies (plus some residences in military agencies). Thus, there is no evidence available that would show higher recycling rates for containers in office settings due to deposit systems relative to drop-off systems typically used in federal office buildings. The overall impact of beverage deposit systems in this context is impossible to determine. However, the principal objective of 40 CFR part 244 was to establish the federal government as a leader in the collection of materials for recycling and to provide the impetus for new programs nationwide. As described elsewhere in this preamble, actions taken by the federal government at the direction of the President through Executive Order 12873 and the recently issued Executive Order 13101 demonstrate that agencies have made substantive and sustained progress towards implementing and expanding recycling programs.

B. Comments in Support of Removing Part 244

Comment on Impractical Expenses: Several commenters supported the removal of 40 CFR part 244, citing its impracticality and possible expenses. Commenters also stated that the system is unnecessary, considering that other, more comprehensive recycling collection programs are already in place.

Findings Addressing These Comments: EPA's research was focused on identifying existing recycling collection programs at federal facilities and did not address the economics of deposit programs in general. EPA concurs that the recycling of materials has been successfully accomplished in many federal facilities via more comprehensive solid waste management programs that include a wider range of materials than those addressed by a beverage container deposit system alone. In addition, as described previously in this preamble, EPA's research indicated that personnel at federal facilities consider the provisions of 40 CFR part 244 to be impractical and difficult to implement which could be cited as a basis for not implementing a bottle deposit system. When the requirements of part 244 were explained, facility personnel expressed strong reservations regarding their ability to implement the deposit system, citing logistical issues and lack of personnel to implement the regulation. Facility personnel discussed practical barriers ranging from ensuring the redemption of collected materials to requiring that beverage containers carry a label or stamp indicating the deposit amount.

IV. EPA's Decision Based on Comments Received

With the implementation of federal collection programs, state and local recycling collection mandates and programs, RCRA section 6001 and E.O. 12873, as amended by E.O. 13101, the need for separate guidelines for federal facilities on beverage containers has passed. Therefore, EPA is removing 40 CFR part 244 from the Code of Federal Regulations.

V. Analysis Under Executive Order (E.O.) 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one 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 rights and obligations or 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 Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' within the meaning of E.O. 12866.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final 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 adverse economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), the Agency certifies that today's final rule will not have a significant adverse impact on a substantial number of small entities. Today's rule is deregulatory in nature. The effect of today's final rule is to remove obsolete guidelines which are mandatory only for Federal facilities but that, for various reasons, have generally not been implemented. Therefore, EPA certifies that today's rule will not have a significant economic impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is needed.

VII. Paperwork Reduction Act

The removal of these guidelines from the CFR merely reflects their current obsolescence and thus has no significant regulatory impact. There is no affect on requirements under the Paperwork Reduction Act.

VIII. 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. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

IX. 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 affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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

XI. National Technology Transfer and Advancement Act of 1995

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

XII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that the proposed action 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 UMRA.

XIII. Executive Order 12898: Environmental Justice

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. The Agency does not believe, however, that today's rule deleting these obsolete solid waste management guidelines for beverage containers will have an adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

XIV. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 July 19, 1999.

List of Subjects in 40 CFR Part 244

Environmental protection, Beverages, Government property, Recycling.

Dated: June 10, 1999.

Carol M. Browner,

Administrator.

Under the authority of 42 U.S.C. sections 6907, 6912, 6961, and 6964, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 244—[REMOVED]

1. Part 244 is removed.

[FR Doc. 99–15436 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–158, RM–8239, RM–8317]

FM Broadcasting Services; Hazlehurst, Utica, and Vicksburg, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Final Rule; application for review.

SUMMARY: In MM Docket No. 93–158, the Chief, Policy and Rules Division, dismissed with prejudice, pursuant to a request for settlement filed jointly by Flinn Broadcasting Corporation and Donald B. Brady, an *Application for Review* filed by Brady. He had requested review of the Memorandum Opinion and Order, 61 FR 7999, published March 1, 1996, on reconsideration of the *Report and Order*, 59 FR 55,593, published November 8, 1994. The *Report and Order* had granted a counterproposal in this proceeding, substituting Channel 265C2 at Utica, Mississippi, and two accommodating channel substitutions. With this action, the proceeding is terminated.

DATES: Effective June 17, 1999.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order*, MM Docket 93–158, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, S.W., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–15335 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 116
Thursday, June 17, 1999

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

RIN 0910–AB16

Exports: Notification and Recordkeeping Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 16, 1999, the comment period for the proposed rule that appeared in the **Federal Register** of April 2, 1999 (64 FR 15944). The proposed rule would establish the notification and recordkeeping requirements for persons exporting human drugs, biologics, devices, animal drugs, food, and cosmetics that may not be marketed or sold in the United States. FDA is taking this action in response to numerous issues raised by the proposed rule thus far.

DATES: Written comments by July 16, 1999.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: Enacted and later amended in 1996, the FDA Export Reform and Enhancement Act (Pub. L. 104–134, as amended by Pub. L. 104–180) significantly changed the export requirements for unapproved human drugs, biologics, devices, and animal drugs. For example, before the law was enacted, most exports of unapproved new drug products could only be made to the 21 countries then identified in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382), and these exports were subject to numerous restrictions. The FDA Export Reform and Enhancement Act amended section 802 of the act to allow, among other things, the export of unapproved new human drugs to any country in the world if the drug complies with the laws of the importing country and has valid marketing authorization from any of the following countries: Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the countries in the European Union (EU) and the European Economic Area (EEA) and certain other requirements are met (see section 802(b)(1)(A) of the act). Currently, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, Iceland, Liechtenstein, and Norway. The list of countries will expand automatically if any country accedes to the EU or becomes a member of the EEA. This provision of section 802 of the act also applies to the export of certain devices that cannot be sold or marketed in the United States.

The FDA Export Reform and Enhancement Act also modified the export authority in section 801 of the act (21 U.S.C. 381). Before enactment of the FDA Export Reform and Enhancement Act, section 801(e)(1) of the act applied to the exportation of certain foods, drugs, devices, and cosmetics. Products exported under section 801(e) of the act are not considered adulterated or misbranded if the product intended for export: (1) Meets the foreign purchaser's specifications; (2) is not in conflict with the laws of the country to which it is being exported; (3) is labeled on the outside of the shipping package that the product is intended for export; and (4) is not sold or offered for sale in domestic commerce (see section 801(e)(1) of the act). Additional requirements apply to certain devices (see section 801(e)(2) of the act). The FDA Export Reform and Enhancement Act extended these four basic requirements to all exports under sections 801 and 802 of the act, and to exports of partially processed biologics under section 351(h) of the Public Health Service Act (the PHS Act) (42 U.S.C. 262(h)) (see section 801(e) and (f) of the act); section 802(f)(3) of the act; and section 351(h) of the PHS Act, and made section 801(e) of the act the principal export authority for the exportation of unapproved animal drugs other than animal drugs banned in the United States. It also imposed additional labeling requirements on certain exports of approved drugs (see section 801(f) of the act).

The FDA Export Reform and Enhancement Act also established recordkeeping and notification requirements. Products exported under section 802 of the act are subject to certain requirements under section 802(f) and (g) of the act. Section 802(f) of the act prohibits a drug or device from being exported under section 802 of the act if it: (1) Does not conform with current good manufacturing practices; (2) is adulterated under certain provisions in section 501 of the act (21 U.S.C. 351); (3) does not comply with section 801(e)(1) of the act; (4) is the subject of a determination by FDA or the U.S. Department of Agriculture (with respect to veterinary biologics) that the probability of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States; (5) would present an imminent hazard to the public health of the foreign country; (6) fails to comply with labeling requirements in the country receiving the exported drug or device; or (7) is not promoted in accordance with labeling requirements.

Section 802(g) of the act requires an exporter of a drug or device under section 802(b)(1)(A) of the act to provide a ''simple notification'' to the agency ''identifying the drug or device when the exporter first begins to export such drug or device'' to any of the 25 countries identified in section 802(b)(1)(A) of the act. For exports to other, nonlisted countries, section 802(g) of the act requires the exporter to provide a simple notification ''identifying the drug or device and the country to which such drug or device is being exported.'' This section also requires persons export under any provision of section 802 of the act to ''maintain records of all drugs or

devices exported and the countries to which they were exported.''

In the **Federal Register** of April 2, 1999 (64 FR 15944), FDA published a proposed rule that would establish the notification and recordkeeping requirements for persons exporting human drugs, biologics, devices, animal drugs, food, and cosmetics that may not be marketed or sold in the United States. Because reactions to the proposed rule thus far have raised numerous issues, the agency wants to ensure that interested persons have an adequate opportunity to examine the rule and to submit comments. Therefore, FDA is extending the comment period until July 16, 1999.

Interested persons may, on or before July 16, 1999, submit to the Dockets Management Branch (address above) written comments on the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the proposed rule and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. The proposed rule may also be obtained through FDA's web site at ''www.FDA.gov''.

Dated: June 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15395 Filed 6–15–99; 10:04 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 99N–1502]

Quality Mammography Standards; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing mammography. The purpose of the amendments is to incorporate changes required by the Mammography Quality Standards Reauthorization Act (MQSRA). This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Comments on this proposal must be received by August 31, 1999. If FDA receives no significant adverse comment on the provisions of these regulations within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on the direct final rule ends. The direct final rule will be effective November 1, 1999.

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

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20857, 301–594–3332.

SUPPLEMENTARY INFORMATION: This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule is identical to the direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and the direct final rule is withdrawn. FDA is publishing the direct final rule because the rule contains direct incorporations of statutory mandates, and FDA anticipates that it will receive no significant adverse comments. If no significant comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect no later than 135 days after publication. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives significant adverse comments regarding this rule, the agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to the comments under this rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. It should be remembered, however, that the requirements themselves were established by the MQSRA. FDA must implement these new statutory provisions.

In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a note-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered a significant adverse comment under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment shows how the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

I. Background

The Mammography Quality Standards Act (the MQSA) (Pub. L. 102–539) was passed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that, to lawfully provide mammography services after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, shall be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). To become accredited and certified, a facility had to meet national quality standards to be established by the Secretary. The authority to establish these standards, to approve accreditation bodies, and to certify facilities was delegated by the Secretary to FDA.

Facilities were initially accredited and certified if they met the standards contained within the interim rules issued by FDA in the **Federal Register** of December 21, 1993 (58 FR 67558 and 58 FR 67565), and amended by another interim rule published in the **Federal Register** of September 30, 1994 (59 FR 49808). More comprehensive standards were proposed by FDA in the **Federal Register** of April 3, 1996 (61 FR 14856,

61 FR 14870, 61 FR 14884, 61 FR 14898, and 61 FR 14908). After some revision in response to the approximately 8,000 comments received on the proposed rule, a final rule was published in the **Federal Register** of October 28, 1997 (62 FR 55852) (hereinafter referred to as the October 1997 final rule). The effective date of most of the new standards contained within the October 1997 final rule is April 28, 1999, but a few will not become effective until October 28, 2002.

On October 9, 1998, the MQSRA (Pub. L. 105–248) became law. The basic purpose of the MQSRA was to extend the authorities established by the MQSA until September 30, 2002. However, the MQSRA also contained a requirement that was significantly different from the corresponding requirement in the October 1997 final rule. Although this MQSRA requirement will become effective on April 28, 1999, with or without the amendment of the final rule, FDA is proposing to amend the final rule to incorporate the change. The purpose of this proposed amendment is to provide to the mammography facilities the convenience of being able to find all of the quality standards within a single document instead of having to consult both the October 1997 final rule and the MQSRA and to avoid confusion as to the applicable reporting requirement.

Other provisions of the MQSRA clarify the basis for some of the requirements contained within the October 1997 final rule. FDA is also amending the October 1997 final rule to conform its wording of those requirements to that of the statute.

II. Changes in the Regulations

A. Reporting Requirements

Section 900.12(c)(2) (21 CFR 900.12(c)(2)) of the October 1997 final rule describes the requirements for communicating mammography results to the patients. As published in the October 1997 final rule, these requirements mandated that each mammography facility have a system to ensure that the results of each examination are communicated to the patient in a timely manner. Patients without a referring health care provider were to be sent the report of the examination (as described in § 900.12(c)(1)) directly by the mammography facility, along with a written notification or summary of the results in lay terms. It was further required by the October 1997 final rule that such self-referred patients should be referred to a health care provider when clinically indicated.

In the case of patients with a referring health care provider, § 900.12(c)(3) required that the health care provider receive the report of the examination. The facility's system for ensuring that results reached the patient could utilize the services of that health care provider to achieve that goal. There was no specific requirement that a summary in lay terms be provided to the patient with a referring health care provider.

The MQSRA amended the MQSA to specifically require that all patients, not just self-referred patients, receive directly from the mammography facility, a summary of the written report in terms easily understood by a lay person. As previously noted, this MQSRA requirement will go into effect on April 28, 1999. FDA is proposing to amend § 900.12(c)(2) to incorporate this new requirement.

B. Clarifications

The MQSRA at several points clarified the provisions of the MQSA upon which certain requirements of the interim and final rules were based. In contrast to the change in the patient reporting requirements, these clarifications became effective on October 9, 1998, the date on which the MQSRA became law. FDA is proposing to amend the regulations to similarly clarify the wording of the October 1997 final rule on these points.

1. Review Physicians

The most important function of the accreditation bodies approved by FDA is to conduct a quality review of clinical images submitted by facilities seeking accreditation. This review is the key factor in determining if the facility should be accredited and then certified. It has been recognized from the start of the MQSA program that the physicians used by the accreditation bodies to review the clinical images submitted by the facilities should meet qualifications beyond those needed to serve as interpreting physicians in mammography facilities. All accreditation bodies applying to FDA for approval must demonstrate that their reviewing physicians have the high qualifications necessary to perform such reviews before approval is given.

In section 4, the MQSRA emphasized these points by defining the physicians reviewing clinical images for the accreditation bodies as ''review physicians.'' In the MQSRA definition, it is further recognized that the accreditation bodies can establish, with FDA approval, additional qualifications for these review physicians beyond the qualifications applicable to interpreting physicians in mammography facilities.

FDA is proposing to add § 900.2(yy) to incorporate the MQSRA definition of ''review physician'' into the final rule. FDA is further proposing to amend § 900.4 in order to use the term review physician at the appropriate points. In addition, since this term could be confused with the term ''reviewing interpreting physician,'' presently used in connection with the requirements for the mammography audit, FDA is proposing to change the term, ''reviewing interpreting physician'' to ''audit interpreting physician'' in § 900.12(f).

2. Patient Notification

The October 1997 final rule at § 900.12(j) states that if FDA determines that any activity related to the provision of mammography at a facility presents a sufficiently serious risk to human health, the agency may require the facility to notify the patients, their physicians, and/or the public of actions that may be taken to minimize this risk. This provision was established to aid FDA in fulfilling its general responsibility under the MQSA to inform the public about facilities against which the agency has been required to take action for failure to meet the quality standards. In section 10(a), the MQSRA provided a specific statement of the agency's authority to require patient notification. FDA is proposing to amend the wording of § 900.12(j) to bring it into conformance with the wording of the MQSRA on this point.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of these proposed amendments under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze the impact of a rule on small entities. The Unfunded

Mandates Reform Act requires (in section 201) that agencies prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation).

As previously noted, the proposed amendments explained under section II.B of this document merely clarify provisions already contained within the October 1997 final rule. The impacts of the provisions of that final rule were discussed in the preamble of the final rule (62 FR 55852 at 55961), and are unchanged by the clarifications. Any economic impact of the proposed amendments is related solely to the change in the patient reporting requirement mandated by the MQSRA. Given the statutory basis for extending this requirement to all mammography facilities effective April 28, 1999, FDA did not consider alternatives to implementing the requirements.

In the October 1997 final rule, FDA estimated that there were 9,800 mammography facilities that would be considered small. Moreover, FDA previously estimated the impact of a requirement for sending a lay summary of results to all patients during the development of its proposed rule of April 3, 1996 (61 FR 14856), although that requirement was removed from the October 1997 final rule in response to public comments (Ref. 1). FDA believes that these estimates remain accurate.

The earlier estimate concerning the impact of required lay summaries was based upon the assumption that an adequate lay summary of results could be provided in the great majority of cases in a brief, standardized format. Using this assumption, it was estimated that the compliance cost per examination would be $0.94, including the labor of the office worker and the cost of postage.

To convert this per examination cost to a national total, it was necessary to make several other assumptions. Using the best data and expert opinion available at the time, it was estimated that approximately 25 million mammography examinations were conducted annually in this country. Of this, it was estimated that 7.7 percent or 1,925,000 were examinations of self-referred patients. Because facilities were already required by the MQSA (and by the interim rule) to provide a lay summary of results to self-referred patients, that portion of the cost of sending lay summaries had already been included in the impact estimates made in association with the development of the interim rule of October 27, 1993.

There remained then approximately 23,075,000 patients for which this was potentially a new requirement. However, it was further estimated that 40 percent of the patients were already receiving a lay summary in some form from the facility at which they received their examinations. Thus, the new requirement would lead to additional lay summaries in only 60 percent of the referred examinations or approximately 13,845,000. At $0.94 a lay summary, the added cost would be slightly over $13 million a year.

Two major changes have occurred since the information upon which these estimates were based was collected in late 1995. Most significantly, through FDA's activities and those of other private and government groups, public awareness of the need for regular mammography examinations and public confidence that a high quality examination will be received have both increased. As a result, the number of examinations given per year has increased to an estimated 40 million. This requires increasing the costs estimated previously by 60 percent. Postage rates have also gone up $0.01 per letter thus the cost per lay summary would increase from $0.94 to $0.95. The combined impact of these two changes is to increase the estimate of the annual incremental costs to meet this proposed new requirement to approximately $21 million.

For the great majority of cases, the assumption that the lay summaries can be provided in brief, standardized format is valid. However, in approximately 10 percent of the cases, the overall assessment of the findings is expected to be ''suspicious'' or ''highly suggestive of malignancy.'' In such cases, the facility is required to ''make reasonable attempts to ensure that the results are communicated to the patients as soon as possible.''

Facilities that accept self-referred patients are already required by the final rule to make such attempts for cases with an overall assessment of ''suspicious'' or ''highly suggestive of malignancy.'' Based upon the assumption that the attempt would involve a 5 minute telephone conversation of the interpreting physician with the patient, a cost of $8.93 per examination was estimated. This cost would be in addition to the $0.95 estimated cost for the written lay summary which would still need to be sent. Assuming that this would be a new cost for 10 percent of the 60 percent of the referred patients among the 40 million receiving examinations annually, the incremental cost for these contacts is approximately $21.4 million.

The total annual incremental cost due to this proposed new requirement, therefore, would be approximately $42.4 million. Previously, the annual cost for compliance with the interim and final MQSA rules was estimated at $61.5 million (Ref. 2). Adding the cost of compliance with this proposed new requirement brings the total annual cost of compliance with the final rule as amended to approximately $103.9 million.

Compliance with the proposed new requirement would also be expected to increase the benefits from mammography. Mammography is the most effective technique presently available for the early detection of breast cancer. Early detection of breast cancer followed by prompt treatment can avert mortalities that can result if treatment is delayed until the cancer reaches a more advanced stage. In addition, the cost and severity of the treatment methods will in general be less when the cancer is treated at an early stage. Even in cases where the assessment is negative, there will be an expected benefit arising from relieving the anxiety of the patient about the possible results of the examination through prompt reporting of results to her. But for these benefits to be gained, the patient must be informed of the results of her examination so that necessary followup actions can be promptly taken. Unfortunately, although it is not possible to make a quantitative estimate of the number of such cases, there have been frequent complaints about patients receiving the results of their examinations after an undue delay or not at all. Studies have also shown that direct communication of results to the patient by the mammography facility (as compared to traditional communication procedures where the facility communicates only with the referring provider), produces an improvement in compliance with followup recommendations (Ref. 3). The new requirement should thus add to the benefits expected from interim and final rules, which were previously estimated to range from $284 to $408 million (61 FR 55986), primarily due to a gain in averted mortalities (Ref. 2).

Based on these analyses, FDA has determined that the rule is consistent with the principles set forth in the Executive Order, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act. The wording of the requirement related to sending lay summaries to referred patients directly parallels that of the MQSRA and so, in accordance with the Executive Order, maximizes the net benefits to the extent

allowed by that statute. Similarly, in accordance with the Regulatory Flexibility Act, the impact of the rule on small entities has been analyzed. Finally, as noted previously, the incremental annual expenditures (beyond those already incurred from the previous interim and final rules) required by the rule are estimated at $42.4 million and thus do not exceed $100 million in 1 year so the rule does not come under the requirements of the Unfunded Mandates Reform Act.

V. Paperwork Reduction Act of 1995

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

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

Title: Lay Summary of Examination Results to Patients

Description: This proposed rule would merely implement a statutory information collection requirement; there is no additional burden attributable to the regulation. The proposed rule would conform the requirements of this section with the requirement of section 6 of Pub. L. 105–248 that states: ''(IV) whether or not such a physician is available or there is no such physician, a summary of the written report shall be sent directly to the patient in terms easily understood by a lay person.'' To produce the required lay summary, the mammography facilities will review the medical report of each patient's examination and collect from it the necessary information.

Respondent Description: Businesses and other for-profit organizations, nonprofit organizations.

For consistency with the direct final rule to which this proposed rule is a companion, FDA is following the PRA comment procedures for direct final rules in this proposed rule. As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this proposed rule by August 31, 1999, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. At the close of the 75-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. 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.

VI. References

The following references have been placed on display at 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. Eastern Research Group, ''Cost and Benefit Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Preliminary Final,'' March 14, 1996.

2. Eastern Research Group, ''Economic Impact Analysis of Regulations Under the Mammography Quality Standards Act of 1992–Final,'' October 7, 1997.

3. Agency for Health Care Policy and Research (AHCPR), ''Quality Determinants of Mammography,'' AHCPR Pub. No. 95–0632, October 1994.

List of Subjects in 21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

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 900 be amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

2. Section 900.2 is amended by adding paragraph (yy) to read as follows:

§ 900.2 Definitions.

* * * * *

(yy) *Review physician* means a physician who, by meeting the requirements set out in § 900.4(c)(5), is qualified to review clinical images on behalf of the accreditation body.

3. Section 900.4 is amended by revising the last sentence of paragraph (a)(4); and by revising paragraphs (c)(3)(ii), (c)(5) introductory text, (c)(5)(i), (c)(5)(ii), and (c)(6)(ii) to read as follows:

§ 900.4 Standards for accreditation bodies.

(a) * * *

(4) * * * Such individuals who review clinical or phantom images under the provisions of paragraphs (c) and (d) of this section or who visit facilities under the provisions of paragraph (f) of this section shall not review clinical or phantom images from or visit a facility with which such individuals maintain a relationship, or when it would otherwise be a conflict of interest for them to do so, or when they have a bias in favor of or against the facility.

* * * * *

(c) * * *

(3) * * *

(ii) All clinical images submitted by a facility to the accreditation body shall be reviewed independently by two or more review physicians.

* * * * *

(5) Review physicians. Accreditation bodies shall ensure that all of their review physicians:

(i) Meet the interpreting physician requirements specified in § 900.12(a)(1) and meet such additional requirements as have been established by the accreditation body and approved by FDA;

(ii) Are trained and evaluated in the clinical image review process, for the types of clinical images to be evaluated by a review physician, by the accreditation body before designation as review physicians and periodically thereafter; and

* * * * *

(6) * * *

(ii) If a review physician identifies a suspicious abnormality on an image

submitted for clinical image review, the accreditation body shall ensure that this information is provided to the facility and that the clinical images are returned to the facility. Both shall occur no later than 10-business days after identification of the suspected abnormality.

* * * * *

4. Section 900.12 is amended by revising paragraphs (c)(2) and (f)(3) and the first sentence of paragraph (j)(2) to read as follows:

§ 900.12 Quality standards.

* * * * *

(c) * * *

(2) *Communication of mammography results to the patients.* Each facility shall send each patient a summary of the mammography report written in lay terms within 30 days of the mammographic examination. If assessments are ''Suspicious'' or ''Highly suggestive of malignancy,'' the facility shall make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.

(i) Patients who do not name a health care provider to receive the mammography report shall be sent the report described in paragraph (c)(1) of this section within 30 days, in addition to the written notification of results in lay terms.

(ii) Each facility that accepts patients who do not have a health care provider shall maintain a system for referring such patients to a health care provider when clinically indicated.

* * * * *

(f) * * *

(3) *Audit interpreting physician.* Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period(s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results and notifying other interpreting physicians of their results and the facility aggregate results. If followup actions are taken, the audit interpreting physician shall also be responsible for documenting the nature of the followup.

* * * * *

(j) * * *

(2) If FDA determines that the quality of mammography performed by a facility, whether or not certified under § 900.11, was so inconsistent with the quality standards established in this section as to present a significant risk to individual or public health, FDA may require such facility to notify patients who received mammograms at such facility, and their referring physicians, of the deficiencies presenting such risk, the potential harm resulting, appropriate remedial measures, and such other relevant information as FDA may require. * * *

Dated: June 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15293 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

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

ACTION: Notice of limited reopening of rulemaking record.

SUMMARY: On October 17, 1997, OSHA published its proposed standard to regulate occupational exposure to tuberculosis (TB). Public hearings on the proposal were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL between April 7 and June 4, 1998. The post-hearing comment period closed on October 5, 1998. OSHA is now reopening the rulemaking record for 45 days to submit two reports to the docket: OSHA's report on TB control practices in homeless shelter settings (Ex. 179–1); and the National Institute for Occupational Safety and Health's (NIOSH) Health Hazard Evaluation (HHE) of a medical waste treatment facility (Ex. 179–2). OSHA invites public comment on the findings of these reports and the underlying issues of the coverage of homeless shelters and medical waste treatment facilities within the scope of a final TB standard. OSHA also seeks comment on including TB and AIDS clinics and probation and parole officers within the scope of the standard as well as expanding the coverage of the standard to include all social service workers.

In addition, OSHA is submitting to the docket four other documents, previously unavailable, that relate to issues addressed during the public hearings. These documents are: The American College of Occupational and Environmental Medicine's (ACOEM) ''Guidelines for Protecting Health Care Workers Against Tuberculosis'' (Ex. 179–3); ''Laboratory Performance Evaluation of N95 Filtering Facepiece Respirators, 1996'' (Morbidity and Mortality Weekly Report, December 11, 1998) (Ex. 179–4); ''The Costs of Healthcare Worker Respiratory Protection and Fit-Testing Programs'' by Scott E. Kellerman et al. (September 1998, Journal of Infection Control and Epidemiology) (Ex. 179–5); and ''The Relative Efficacy of Respirators and Room Ventilation in Preventing Occupational Tuberculosis' by Kevin Fennelly and Edward Nardell (October 1998, Journal of Infection Control and Epidemiology)(Ex. 179–6). Public comment on these documents is also invited. Comments should be limited to the issues raised in these documents, and participants do not need to resubmit evidence or comments that are already in the record.

DATES: Comments must be postmarked no later than August 2, 1999.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Comments limited to 10 pages or fewer may also be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

Comments may also be submitted electronically through OSHA's Internet site at URL, *http://www/osha-slc.gov/e-comments/e-comments-tb.html.* Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the above address. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the new reports being submitted, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–1999, FAX (202) 693–1634.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1993, the Labor Coalition to Fight TB in the Workplace petitioned OSHA to initiate rulemaking for a permanent standard issued under Section 6(b) of the Occupational Safety and Health (OSH) Act to protect workers from occupational exposure to TB. Citing the recent resurgence of TB and the emergence of new cases of multidrug-resistant TB (MDR–TB), the petitioners stressed the need for a substance-specific standard to address the particular hazards associated with occupational exposures to TB. The petitioners contended that the non-mandatory TB Guidelines published by the Centers for Disease Control and Prevention (CDC) do not provide adequate protection because they are not fully or rigorously implemented in most workplaces.

On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). Based on a review of the data, OSHA made a preliminary determination that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures. To reduce this occupational risk, OSHA proposed a standard that would require employers to protect TB-exposed workers by means of infection prevention and control measures that have been demonstrated to be highly effective in reducing or eliminating job-related TB infections. These measures include procedures for the early identification of individuals with suspected or confirmed infectious TB, the isolation of such individuals in rooms designed to protect those in the vicinity of the room from contact with microorganisms causing TB, the use of respirators when performing certain high-hazard procedures, employee training, employee skin testing and, where appropriate, medical management and follow-up after an exposure incident or skin test conversion has occurred.

Homeless Shelters

Throughout the development of the proposal, OSHA has been concerned about the feasibility of implementing a TB standard in homeless shelters because of the unique characteristics of the workforce in such shelters, the unique characteristics of the client population, and the non-profit nature of most homeless shelters. Prior to publication of the proposal, OSHA held stakeholder meetings with homeless shelter representatives and met with the Interagency Council on the Homeless to discuss issues related to the potential impact the standard might have on homeless shelters. In addition, during review under the Small Business Regulatory Enforcement Fairness Act (SBREFA), small business representatives from the homeless shelter sector raised specific concerns about many shelters' ability to implement certain provisions of OSHA's proposed standard. To address issues related to the feasibility of the proposed standard for homeless shelters, OSHA requested information in the proposal and held special sessions at each hearing site to receive testimony from employers, employees, clients and others representing homeless shelters. In addition, OSHA initiated a study to examine these issues further through an on-site survey of a number of homeless shelters. The results of this study (Ex. 179–1) did not become available to OSHA until after the close of the public comment period. This study has now been placed in the docket for this rulemaking and is available for public comment.

Waste Treatment Facilities

During the development of the proposal, OSHA was also concerned about additional types of work settings that might need to be included within the scope of the TB standard because they pose a significant risk of occupational TB exposure to their employees. During the public hearings, testimony was submitted that addressed the potential for significant occupational exposure to TB at medical waste treatment facilities handling medical wastes that had not been decontaminated. Preliminary findings from investigations at a medical waste treatment facility where a TB outbreak had occurred were presented at the hearings and used as supplemental evidence to support the inclusion of medical waste treatment facilities within the scope of the standard. Other commenters suggested that instead of including the waste treatment facilities, laboratories covered under the TB standard should be required to decontaminate their TB wastes prior to sending them offsite for disposal. At the time of the public hearings on the TB rule, NIOSH was in the process of conducting a Health Hazard Evaluation (HHE) to evaluate the potential for occupational exposure to *Mycobacterium tuberculosis* during the processing the medical wastes. The final HHE (Ex. 179–2) was completed after the close of the public comment period, and has now been entered into the docket for public comment.

Other Work Settings

In addition to homeless shelters and medical waste treatment facilities, other work settings were also recommended by various commenters for possible inclusion in the final standard. Several commenters urged OSHA to cover TB and AIDS clinics based on the fact that these types of clinics are likely to have a high percentage of clients at risk for having infectious TB. OSHA is considering including these ambulatory clinics within the scope of the final standard and seeks additional information on whether such inclusion is warranted. In particular, OSHA solicits information on the number of such clinics, the number of employees typically employed by these clinics, and data on the risk of TB to employees of these facilities.

Commenters also urged the Agency to include parole and probation officers within the scope of the final standard. These commenters testified during the public hearings that parole and probation officers must often interact with the same type of high-risk populations as employees in correctional facilities and therefore, they should be included within the scope of the final standard. Therefore, OSHA also solicits additional information on whether the inclusion of parole and probation officers under the final standard is warranted.

Finally, commenters urged the Agency to expand the standard's coverage of social service workers to include all social service workers and not just social service workers providing services to individuals who are in TB isolation or who are otherwise segregated or isolated due to having infectious TB. OSHA solicits information on whether expanding coverage to all social service workers is warranted. In particular, OSHA is concerned about the feasibility of including such a broad spectrum of workers in the final standard. Thus, the Agency is interested in ways to determine the type(s) of social service workers who may reasonably be anticipated to incur occupational exposure to TB and types of provisions that would be most effective to reduce TB risks of such employees.

Additional Submissions to the Record

In addition, four other documents pertinent to issues raised during the rulemaking became available after the close of the rulemaking record. These documents are: (1) the American College of Occupational and Environmental

Medicine's (ACOEM) ''Guidelines for Protecting Health Care Workers Against Tuberculosis'' (Ex. 179–3); (2) ''Laboratory Performance Evaluation of N95 Filtering Facepiece Respirators, 1996'' (Morbidity and Mortality Weekly Report, December 11, 1998) (Ex. 179–4); (3) ''The Costs of Healthcare Worker Respiratory Protection and Fit-Testing Programs'' by Scott E. Kellerman et al. (September 1998, Journal of Infection Control and Epidemiology) (Ex. 179–5) and (4) ''The Relative Efficacy of Respirators and Room Ventilation in Preventing Occupational Tuberculosis'' by Kevin Fennelly and Edward Nardell (October 1998, Journal of Infection Control and Epidemiology) (Ex. 179–6).

Reopening of the Record and Request for Comments

In order to complete the rulemaking record on issues related to the feasibility of the proposed standard for homeless shelters and medical waste treatment facilities, OSHA is now reopening the rulemaking record and placing in the record the final homeless shelter study, ''Final Report on Site Visits to Nine Homeless Shelters'', (Ex. 179–1) and the NIOSH medical waste facility HHE(Ex. 179–2). OSHA is also submitting four additional documents, listed above, which include three articles related to respiratory protection issues discussed during the hearings and one article by the ACOEM outlining recommendations for controlling the transmission of TB. These exhibits are available in the Docket Office at the address listed above.

OSHA seeks public comment on (1) the homeless shelter report, (2) the NIOSH HHE, and (3) the underlying issues related to the feasibility of the proposed standard for homeless shelters, and whether the standard should cover medical waste treatment facilities, to help OSHA determine whether and, if so, how homeless shelters and medical waste treatment facilities should be regulated under the final TB standard. Comments are also requested on whether OSHA should require laboratories to decontaminate medical wastes containing *Mycobacterium tuberculosis* before these wastes are sent offsite for disposal. In addition, new information on including TB and AIDS clinics as well as social service workers and parole and probation officers within the scope of a final standard is sought.

OSHA also requests comment on four additional documents: the ACOEM TB guidelines and three articles addressing respiratory protection against TB, which are listed above. In particular, the Agency is interested in comments regarding the adequacy of qualitative fit-testing for N95 respirators for determining a face-seal leakage of no greater than 10 percent.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, this 9th day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–15240 Filed 6–16–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–035–FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of additional information about a previously proposed amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri submitted supporting documentation for the normal husbandry practices proposed in the previous amendment. The practices include applying pesticides and soil amendments; subsoiling; repairing rills and gullies; burning; overseeding; and planting and pruning trees. Missouri intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4:00 p.m., c.d.t., July 19, 1999.

ADDRESSES: You should mail or hand deliver written comments to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Missouri program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (573) 751–4041.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. You can find general background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions on the Missouri program at 30 CFR 925.12, 925.15, and 925.16.

II. Discussion of the Proposed Amendment

By letter dated October 10, 1990, Missouri sent us an amendment to its program under SMCRA (Administrative Record No. MO–519). We announced receipt of the amendment in the November 1, 1990, **Federal Register** (55 FR 46076) and invited public comment on its adequacy. The public comment period closed December 3, 1990. In the September 29, 1992, **Federal Register** (57 FR 44660), we approved the amendment with exceptions. The exceptions included revisions to Missouri's regulation at 10 CSR 40–7.021(1)(B)2 concerning normal husbandry practices. We did not approve this regulation because Missouri had not provided evidence to substantiate the use of each proposed practice as a normal husbandry practice. As codified at 30 CFR 925.16(p)(15), we required Missouri to provide such evidence for the administrative record or to delete the regulation at 10 CSR 40–7.021(1)(B)2.

By letter dated June 4, 1999, Missouri submitted agricultural publications and

guidelines developed by the University of Missouri—Columbia Extension Division (UMC); other cooperative extension services in cooperation with the U.S. Department of Agriculture; the Missouri Department of Conservation (MDOC); and the U.S. Natural Resources Conservation Service (NRCS) as supporting documentation for the normal husbandry practices proposed in its regulation at 10 CSR 40–7.021(1)(B)2.

Missouri's regulation at 10 CSR 40–7.021(1)(B)2 would allow the permittee, on areas under Phase III liability or the five-year responsibility period, to use specified normal husbandry practices. The practices include: mowing; applying pesticides; applying soil amendments equal to or less than that recommended by the high management yield goals of the NRCS; subsoiling which occurs less than two feet below the surface and which does not remove the revegetation from the surface; burning; overseeding to maintain the approved composition of the stand; and planting and pruning trees. Using these practices will not cause the Phase III liability period to be extended if the permittee can demonstrate that: (1) discontinuance of these measures after the liability period expires will not reduce the probability of permanent revegetation success; (2) the practices are normal husbandry practices within the region on unmined lands having land uses similar to the approved postmining land use of the areas; and (3) the practices are necessary to prevent exploitation, destruction or neglect of the resource and to maintain the prescribed level of use or productivity. Repairing rills and gullies will not cause the Phase III liability period to be extended when rills and gullies develop after the initiation of the Phase III liability period and when that repair is restricted to the filling, grading and reseeding of the eroded portion of the area.

Missouri submitted the following documents to support the husbandry practices proposed in 10 CSR 40–7.021(1)(B)2:

Herbicides for Conservation Tillage Cropping Systems; UMC
1980 Recom. for Chemical Weed Control in Small Grains; UMC
Soil Insect Control in Reduced Tillage Cropping Systems; UMC
Corrective Liming of Missouri Soils; UMC
Using Your Soil Test Results; UMC
Native Warm-Season Grasses; MDOC
Prescribed Burning (Code 338); NRCS
Establishing Forages; UMC
Soil Compaction: The Silent Thief; UMC
Soil Compaction Tips; Cooperative Extension, University of Nebraska
Soil Compaction and Drainage; Ohio State University
Pasture and Hayland Planting (Code 512); NRCS
Tree/Shrub Establishment (Code 612); NRCS
Tree/Shrub Pruning (Code 660); NRCS
Woodland Site Preparation (Code 490); NRCS
Woodland Pruning (Code 660); NRCS
Critical Area Planting (Code 342); NRCS

III. Public Comment Procedures

We are reopening the comment period on the proposed Missouri program amendment at 10 CSR 40–7.021(1)(B)2 to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Missouri program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 10, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–15399 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA50

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Double Coverage

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed rule clarifies our double coverage policy for non-institutional claims for beneficiaries with primary health insurance. TRICARE network, non-network but participating, and non-participating providers are all reimbursed differently under current procedures. This has had the unintended effect of discouraging TRICARE network participation since non-network but participating providers receive the most favorable treatment with respect to double coverage calculations. The Department proposes to revise double coverage reimbursement calculations by reimbursing all providers up to 100 percent of the CHAMPUS Maximum Allowable Charge after the primary health insurance has paid or 115 percent for nonparticipating providers.

DATES: Public comments must be received by August 16, 1999.

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

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

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

This proposed rule clarifies our double coverage policy for non-institutional claims for beneficiaries with primary health insurance. TRICARE network, non-network but participating, and non-participating providers are all reimbursed differently under current procedures and this has had the unintended effect of discouraging TRICARE network participation since non-network but participating providers receive the most favorable treatment with respect to double coverage calculations. The Department proposes to revise double coverage reimbursement calculations by reimbursing all providers up to 100 percent of the CHAMPUS Maximum Allowable Charge after the primary health insurance has paid or up to 115 percent for nonparticipating providers.

II. Rulemaking Procedures

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

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

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

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

A discussion of the major issues received by public comments will be included with the issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military Personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

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

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.8 is amended by adding a new paragraph (c)(4) to read as follows:

§ 199.8 Double coverage.

* * * * *

(c) *Application of double coverage provisions.* * * *

(4) *Effect of Network Participation.* For non-institutional claims, providers receive TRICARE/CHAMPUS payment up to 100 percent of the CMAC (established under § 199.14(h)(1)(i)(B)) after the primary health insurance has paid. For nonparticipating providers, CHAMPUS will pay the difference between the amount paid by the other health insurance and the 115 percent balance billing limit established in § 199.14(h)(1)(i)(C).

* * * * *

Dated: June 10, 1999.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15185 Filed 6–16–99; 8:45 am]

BILLING CODE 1001–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1999–5700]

RIN 2115–AF84

Traffic Separation Schemes: Off San Francisco, in the Santa Barbara Channel, in the Approaches to Los Angeles-Long Beach, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending the existing Traffic Separation Scheme (TSS) off San Francisco and the TSS in the Santa Barbara Channel. The proposed amendments are adopted by the International Maritime Organization and have been validated by several recent vessel routing studies. Once implemented, the amended TSSs would route commercial vessels farther offshore, providing an extra margin of safety and environmental protection in the Monterey Bay National Marine Sanctuary and adjacent waters. Additionally, this proposed rulemaking would incorporate descriptions of these TSSs, as well as a description of the existing TSS in the approaches to Los Angeles-Long Beach, into the Code of Federal Regulations.

DATES: Comments and related materials must reach the Docket Management Facility on or before August 16, 1999.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–1999–5700), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call the Project Officer, Lieutenant Commander Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District at Building 50–6, Coast Guard Island, Alameda, California 94501, telephone 510–437–2951; Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968; or Project Manager, Barbara Marx, Coast Guard, Office of Vessel Traffic Management (G–MOV), at 202–267–0574. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5700), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of the comments.

Public Meeting

We do not now plan to hold a public meeting. But you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

A traffic separation scheme (TSS) is an internationally recognized routing measure used to minimize the risk of collision by separating vessels, by means of traffic lanes, into opposing streams of traffic. The International Maritime Organization (IMO) must adopt a TSS for it to be internationally recognized. IMO adopts TSSs only if a proposed TSS complies with IMO principles and guidelines on ship routing. Vessels are not required to use TSSs; but, if they do so and the TSSs are IMO-adopted, they must comply with Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). Rule 10 requires vessels using an IMO-adopted TSS to proceed in the appropriate traffic lane and to follow the general traffic flow for that lane. It also prohibits vessels from entering a separation zone or crossing a separation line. Fishing vessels are allowed some latitude to operate in the separation zone, but they must not impede the passage of any vessel following a traffic lane.

The Ports and Waterways Safety Act (33 U.S.C. 1221–1232) (PWSA) authorizes the Coast Guard (by authority delegated from the Secretary of Transportation) to establish TSSs, where necessary, to provide safe access routes for vessels proceeding to or from U.S. ports. Before implementing new TSSs or modifying existing TSSs, we must conduct a port access route study. Through the study process, we consult with affected parties to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing. If a study recommends a new or modified TSS, the U.S. requests IMO adoption of the proposed routing measure. After IMO adoption, we must initiate a rulemaking implementing the adopted routing measures. Once a TSS is established, the right of navigation is considered paramount within the TSS.

Existing California TSSs. There are three internationally adopted TSSs off the coast of California. They are reflected on National Oceanic and Atmospheric Administration (NOAA) nautical charts. They are the—

1. TSS off San Francisco—a three-pronged TSS in the approaches to San Francisco Bay adopted by IMO in 1968;

2. TSS in the Santa Barbara Channel—a TSS through the Santa Barbara Channel adopted by IMO in 1969; and

3. TSS in the approaches to Los Angeles-Long Beach—a two-pronged TSS in the approach to Los Angeles-Long Beach adopted by IMO in 1975 that abuts the Santa Barbara Channel TSS.

IMO-adopted Amendments to the TSSs. Consistent with the PWSA, we initiated a port access route study of the California coast in 1979. Study results were published in the early to mid 1980's. The study evaluated potential traffic density patterns, waterways use conflicts, and the need for safe access routes in offshore areas. The study recommended several improvement measures, including amendments to the existing TSSs. Based on these recommendations, the U.S. requested and received IMO adoption of the following amendments, as reflected in ''Ships Routeing,'' Sixth Edition 1991, International Maritime Organization.

1. In 1985, IMO adopted an 18-mile westward extension of the northwest end of the TSS in the Santa Barbara Channel. The extension was designed to increase safety of transit through oil exploration and development zones and encourage coastwise transits at greater distances from shore, reducing the risk of allisions and groundings. One of IMO's conditions of adoption was the installation of a radar beacon (RACON) on Platform Harvest to alert mariners of the structure. We installed the RACON and a white light that flashes once every ten seconds with a nominal range of 17 nautical miles in January of 1991.

2. In 1990, IMO adopted an amendment that rotated the southern approach lane of the TSS off San Francisco westward (seaward) to provide a true north-south alignment. Shifting the southern approach to the west would encourage vessels in this area to transit farther offshore when entering or departing San Francisco Bay from or to the south.

Previous Rulemaking. In 1989, we published a notice of proposed rulemaking (NPRM) entitled ''Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California'' (CGD 83–032; 54 FR 18258). The NPRM proposed implementing several IMO-adopted modifications to

the existing TSSs and establishing a shipping safety fairway along the California coast. We elected to postpone implementation of the IMO-adopted TSS amendments until the studies on the Monterey Bay National Marine Sanctuary (MBNMS) and on oil tanker routing along the California coast (the ''Tanker Free Zone'' study mandated by the Oil Pollution Act of 1990) were complete.

Monterey Bay National Marine Sanctuary (MBNMS) Issues. In 1992, Congress established the MBNMS in recognition of the area's environmental importance and its unique, sensitive, and abundant bio-diversity. The MBNMS is also located in an area of critical importance to maritime commerce. Vessel traffic within the MBNMS was a major concern raised during the Sanctuary designation. Although the spill history in the region shows a small number of spills, many consider the environmental risk significant given the number and volume of vessels transiting in the area and the potential size of a spill and the unique resources at risk.

As part of the MBNMS designation, Congress directed the Secretaries of Commerce and Transportation to evaluate potential threats from spills of oil or other hazardous materials to MBNMS resources and identify possible ways to reduce those threats. To help complete this tasking, the Coast Guard and NOAA established the Monterey Bay Panel of the Navigation Safety Advisory Council (NAVSAC). The panel was made up of key stakeholders (industry, non-governmental organizations and government agencies) and was tasked with reviewing existing practices and hazards and recommending improvement strategies. The panel relied on extensive public involvement to help complete its task and held public workshops in June of 1998.

The Coast Guard and NOAA published the panel's final report, ''Monterey Bay National Marine Sanctuary Vessel Management,'' in October 1998. The report recommended implementing the IMO-adopted amendments to the TSSs off San Francisco and in the Santa Barbara Channel. A copy of this report is included in the public docket (See **ADDRESSES**).

Recent Port Access Route Study. From 1993 through 1996, we conducted a port access route study to analyze vessel routing measures in the approaches to California ports. The study considered the results and findings of several related studies. We published the study results in the **Federal Register** on October 25, 1996 (61 FR 55248).

The study recommended shifting the southern approach lanes of the existing TSS off San Francisco westward (seaward) and extending the existing TSS in the Santa Barbara Channel from Point Conception to Point Arguello. These findings validated the IMO-adopted amendments we are proposing in this rulemaking. The study concluded that no changes to the TSS in the approaches to Los Angeles-Long Beach were necessary at the time.

Los Angeles-Long Beach Port Access Route Study. In 1995, the Ports of Los Angeles and Long Beach initiated major port improvement projects. They will complete these projects by early 2000. We are currently conducting a study of port access routes for the approaches to Los Angeles and Long Beach (notice of study published on March 11, 1999, 64 FR 12139). The study will evaluate potential effects of these recent port improvement projects on navigational safety and vessel traffic management efficiency. We may recommend changes to the existing TSS as a result of the study. Any recommended changes would require adoption by IMO before domestic implementation. Since it may take years to implement any changes to the TSS in the approaches to Los Angeles-Long Beach, it is practical to codify the existing TSS now.

Discussion of Proposed Rule

This rulemaking would implement IMO-adopted amendments to the TSSs off San Francisco and in the Santa Barbara Channel (adopted in 1990 and 1985 respectively) reflected in ''Ships Routeing,'' Sixth Edition 1991, International Maritime Organization. These changes have not been implemented domestically because we were awaiting the completion of studies analyzing the effects of oil tanker routing along the California coastline and the risks of vessel transits through the Monterey Bay National Marine Sanctuary. The proposed amendments to the TSSs off San Francisco and in the Santa Barbara Channel would—

a. Shift the southern leg of the TSS off San Francisco westward to provide a true north/south alignment; and

b. Extend the existing TSS in the Santa Barbara Channel 18 nautical miles beyond Point Conception.

The modifications to the existing TSSs off San Francisco and in the Santa Barbara Channel would encourage vessels to transit further offshore when entering or departing the southern approach lanes of the TSS off San Francisco or the northwestern end of the TSS in the Santa Barbara Channel.

Additionally, this proposed rulemaking would incorporate these TSSs, as well as the existing TSS in the approaches to Los Angeles-Long Beach, into Title 33 part 167 of the Code of Federal Regulations. It also proposes adding the IMO definition of ''area to be avoided'' to the list of definitions in 33 CFR 167.5.

TSS off San Francisco. We propose amending the TSS as currently charted on NOAA nautical charts by rotating the southern approach lanes of the charted TSS westward (seaward) to provide a true north/south alignment.

Currently, vessels entering or departing San Francisco Bay via the southern approach lanes of the TSS pass within 3 nautical miles of the closest point of land (just south of Point Montara). By shifting the approach lanes west (seaward), vessels would transit farther offshore when entering or departing San Francisco Bay, increasing the closest point from land to approximately 6 nautical miles. This increased distance provides an added margin of safety for vessels experiencing a loss of power or steering and provides more time for response vessels to reach a disabled vessel before it drifts ashore.

Furthermore, the shift would help eliminate conflicts between large commercial vessels and the concentrated fleets of fishing vessels operating closer to shore. Finally, the shift would ''line up'' the southern leg of the TSS with the proposed amended TSS in the Santa Barbara Channel.

TSS in the Santa Barbara Channel. We propose amending the TSS as currently charted on NOAA nautical charts by extending the northwestern leg of the TSS 18 nautical miles westward.

Currently, vessels departing the northwestern end of the TSS in the Santa Barbara Channel near Point Conception come in close proximity to the offshore oil platforms Hidalgo, Harvest, and Hermosa. Extending the TSS westward would route vessels farther away from these oil platforms and Point Conception, decreasing the risk of allisions and groundings. Further, it will provide an increased margin of safety in light of anticipated future development in this area. In January of 1991, we installed a radar beacon (RACON) and a white light that flashes once every ten seconds with a nominal range of 17 nautical miles on Platform Harvest to comply with IMO's conditions outlined in the 1985 adoption for the Santa Barbara Channel extension.

Codification of TSSs off San Francisco, in the Santa Barbara Channel, and in the approaches to Los

Angeles-Long Beach and Precautionary Areas. We propose adopting the TSSs and associated precautionary areas off San Francisco, in the Santa Barbara Channel, and in the approaches to Los Angeles-Long Beach published in ''Ships Routeing,'' Sixth Edition 1991, International Maritime Organization, and incorporating them into 33 CFR part 167. The IMO coordinates for the TSSs and precautionary areas are consistent with current NOAA nautical charts, except for an error in the northern leg of the TSS off San Francisco.

When the NOAA charts are reprinted, they should accurately reflect the coordinates adopted by IMO for the northern leg of the TSS, providing greater clearance from Point Reyes and increasing the safety of navigation.

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).

We expect 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. The costs and benefits of this proposed rulemaking are summarized below.

Costs

The proposed amendments to the TSS in the Santa Barbara Channel and the TSS off San Francisco would result in a slight increase in transit times and operating costs for vessels using the TSSs. Most of the vessels using the TSS are large commercial vessels such as containerships. The northbound transit distance through the TSSs will increase by 2.4 nautical miles (nm) and the southbound transit distance will increase by 4.1 nautical miles (nm). The time per transit would increase by approximately 8 minutes (.14 hours) northbound and 14 minutes (.23 hours) southbound. This corresponds to northbound 219.43 (1 hour/17.5 nm × 2.4 nm × 1600 transits/year) and southbound 374.86 (1 hour/17.5 nm × 4.1 nm × 1600 transits per year) additional hours per year. Assuming a fuel cost of approximately $600 per hour, the estimated increase in costs for industry would be $356,574 per year ((219.43 hours + 374.86 hours) × $600/hour).

Vessel operators would incur the minimal cost of plotting new coordinates on their existing charts or purchasing updated charts, when available.

Benefits

Amendments to the TSS in the Santa Barbara Channel. Currently, vessels departing the northwestern end of the TSS near Point Conception come in close proximity to several oil platforms. The proposed 18-mile extension of the TSS would route vessels farther away from these oil platforms and Point Conception, decreasing the risk of allisions and groundings.

Allisions and groundings could result in injuries, pollution, and property damage. Furthermore, the proposed extension will provide an increased margin of safety in light of anticipated future development in this area.

Amendments to the TSS off San Francisco. Currently, vessels entering or departing San Francisco Bay via the southern approach lane of the TSS pass within 3 nautical miles of the closest point of land. The proposed westward shift of the approach lanes would result in vessels transiting farther offshore when entering or departing San Francisco Bay, increasing the closest point from land to approximately 6 nautical miles. This increased distance provides an added margin of safety for vessels experiencing casualties (e.g. loss of power or steering) and provides more time for response vessels to reach a disabled vessel before it drifts ashore. The proposed shift would also help eliminate conflicts between large commercial vessels and the fleets of fishing vessels operating closer to shore. As a result, the proposed rule should reduce the risk of collisions and groundings and resulting injuries, pollution, and property damage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises 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.

This proposed rule should have a minimal economic impact on vessels operated by small entities. The proposal amends two existing TSSs. This action improves safety for vessels using the TSSs by reducing the risk of collisions, allisions, and groundings. Vessels transiting the TSS in the Santa Barbara Channel will have to transit an additional 2 to 4 nautical miles per trip, depending on the direction traveled. This additional transit distance results in increased vessel operating costs ranging from approximately $80 to $140 per trip. Most of the vessels that will incur these additional costs are large commercial vessels such as containerships. For these vessels, an additional $80 to $140 per trip represents an insignificant increase in voyage expenses.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Ms. Barbara Marx, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under 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 health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(I) of Commandant Instruction M16475.lC, it is categorically excluded from further environmental documentation. This rule proposes adjusting two existing traffic separation schemes. These adjustments would enhance safety in the Monterey Bay National Marine Sanctuary and adjacent waters by allowing additional response time for a vessel that is adrift thus preventing groundings, and by routing vessels away from sensitive areas. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. In § 167.5, redesignate paragraphs (a) through (e) as paragraphs (b) through (f), respectively, and add new paragraph (a) to read as follows:

§ 167.5 Definitions.

(a) *Area to be avoided* means a routing measure compromising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships or certain classes of ships.

* * * * *

3. Following § 167.350, add the undesignated center heading ''Pacific West Coast'' and §§ 167.400 through 167.405, 167.450, 167.452, and 167.500 through 167.503 to read as follows:

Pacific West Coast

Sec.

167.400 TSS off San Francisco: General.
167.401 TSS off San Francisco: Precautionary area.
167.402 TSS off San Francisco: Northern approach.
167.403 TSS off San Francisco: Southern approach.
167.404 TSS off San Francisco: Western approach.
167.405 TSS off San Francisco: Main ship channel.
167.450 TSS in the Santa Barbara Channel: General.
167.452 TSS in the Santa Barbara Channel: Between Point Vincente and Point Arguello.
167.500 TSS in the approaches to Los Angeles-Long Beach: General.
167.501 TSS in the approaches to Los Angeles-Long Beach: Precautionary area.
167.502 TSS in the approaches to Los Angeles-Long Beach: Western approach.
167.503 TSS in the approaches to Los Angeles-Long Beach TSS: Southern approach.

Pacific West Coast

§ 167.400 TSS off San Francisco: General.

The Traffic Separation Scheme off San Francisco consists of a precautionary area under § 167.401, a northern approach under § 167.402, a western approach under § 167.403, a southern approach under § 167.404, and a main ship channel under § 167.405. The geographic coordinates in §§ 167.400 through 167.405 are defined using North American Datum 1983 (NAD 83).

§ 167.401 TSS off San Francisco: Precautionary area.

(a) A circular precautionary area is established bounded to the west by an arc of a circle with a radius of six miles centering upon geographical position 37°45.00′ N, 122°41.50′ W and connecting the following geographical positions:

Latitude	*Longitude*
37°42.70′ N	122°34.60′ W.
37°50.30′ N	122°38.00′ W.

(b) The precautionary area is bounded to the east by a line connecting the following geographic positions:

Latitude	*Longitude*
37°42.70′ N	122°34.60′ W.
37°45.90′ N	122°38.00′ W.
37°50.30′ N	122°38.00′ W.

(c) A circular area to be avoided, with a radius of half of a nautical mile, is centered upon the following geographic position:

Latitude	*Longitude*
37°45.00′ N	122°41.50′ W.

(d) A pilot boarding area is located near the center of the precautionary area described in paragraph (b) of this section. Due to heavy vessel traffic, mariners are advised not to anchor or linger in this precautionary area except to pick up or disembark a pilot.

§ 167.402 TSS off San Francisco: Northern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°48.40′ N	122°47.60′ W.
37°56.70′ N	123°03.70′ W.
37°55.20′ N	123°04.90′ W.
37°47.70′ N	122°48.20′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°49.20′ N	122°46.70′ W.
37°58.00′ N	123°02.70′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°53.90′ N	123°06.10′ W.
37°46.70′ N	122°48.70′ W.

§ 167.403 TSS off San Francisco: Southern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°39.10′ N	122°40.40′ W.
37°27.00′ N	122°40.40′ W.
37°27.00′ N	122°43.00′ W.
37°39.10′ N	122°43.00′ W.

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°39.30′ N	122°39.20′ W.
37°27.00′ N	122°39.20′ W.

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°27.00′ N	122°44.30′ W.
37°39.40′ N	122°44.30′ W.

§ 167.404 TSS off San Francisco: Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°41.90′ N	122°48.00′ W.
37°38.10′ N	122°58.10′ W.
37°36.50′ N	122°57.30′ W.
37°41.10′ N	122°47.20′ W.

(b) A traffic lane for south-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°42.80′ N	122°48.50′ W.
37°39.60′ N	122°58.80′ W.

(c) A traffic lane for north-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°35.00′ N	122°56.50′ W.
37°40.40′ N	122°46.30′ W.

§ 167.405 TSS off San Francisco: Main ship channel.

(a) A separation line connects the following geographical positions:

Latitude	*Longitude*
37°45.90′ N	122°38.00′ W.
37°47.00′ N	122°34.30′ W.
37°48.10′ N	122°31.00′ W.

(b) A traffic lane for eastbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°45.80′ N	122°37.70′ W.
37°47.80′ N	122°30.80′ W.

(c) A traffic lane for westbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°46.20′ N	122°37.90′ W.
37°46.90′ N	122°35.30′ W.
37°48.50′ N	122°31.30′ W.

§ 167.450 TSS in the Santa Barbara Channel: General.

The Traffic Separation Scheme in the Santa Barbara Channel is described in § 167.452. The geographic coordinates in § 167.452 are defined using North American Datum 1983 (NAD 83).

§ 167.452 TSS in the Santa Barbara Channel: Between Point Vicente and Point Arguello.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
33°44.90′ N	118°35.70′ W.
34°04.00′ N	119°15.90′ W.
34°25.70′ N	120°51.75′ W.
34°23.75′ N	120°52.45′ W.
34°02.20′ N	119°17.40′ W.
33°43.20′ N	118°36.90′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°45.80′ N	118°35.10′ W.
34°04.80′ N	119°15.10′ W.
34°26.60′ N	120°51.45′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
34°22.80′ N	120°52.70′ W.
34°01.40′ N	119°18.20′ W.
33°42.30′ N	118°37.50′ W.

§ 167.500 TSS in the approaches to Los Angeles-Long Beach: General.

The Traffic Separation Scheme in the approaches to Los Angeles-Long Beach consists of a precautionary area under § 167.501, a western approach under § 167.502, and a southern approach under § 167.503. The geographic coordinates in §§ 167.501 through 167.503 are defined using North American Datum 1983 (NAD 83).

§ 167.501 TSS in the approaches to Los Angeles/Long Beach: Precautionary area.

(a) The precautionary area consists of the water area enclosed by the Los Angeles-Long Beach breakwater and a line connecting Point Fermin Light at 33°–42.30′ N, 118°–17.60′ W, with the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°17.50′ W.
33°37.70′ N	118°06.50′ W.
33°43.40′ N	118°10.80′ W.

(b) A pilot boarding area is located near the center of the precautionary area. Due to heavy vessel traffic, mariners are advised not to anchor or linger in this precautionary area except to pick up or disembark a pilot.

§ 167.502 TSS in the approaches to Los Angeles-Long Beach: Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
33°39.70′ N	118°17.50′ W.
33°38.70′ N	118°17.50′ W.
33°38.70′ N	118°27.60′ W.
33°43.20′ N	118°36.90′ W.
33°44.90′ N	118°35.70′ W.
33°39.70′ N	118°24.90′ W.

(b) A traffic lane for northbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°40.70′ N	118°17.50′ W.
33°40.70′ N	118°24.60′ W.
33°45.80′ N	118°35.10′ W.

(c) A traffic lane for southbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°17.50′ W.
33°37.70′ N	118°28.00′ W.
33°42.30′ N	118°37.50′ W.

§ 167.503 TSS in the approaches to Los Angeles-Long Beach TSS: Southern approach.

(a) A separation zone, two miles wide, is centered upon the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°08.9′ W.
33°19.70′ N	118°03.4′ W.

(b) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°11.30′ W.
33°19.10′ N	118°06.30′ W.

(c) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.70′ N	118°06.50′ W.
33°20.30′ N	118°00.50′ W.

Dated: June 8, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–15139 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 133–4087b; FRL–6355–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the latest revision to the Pennsylvania State Implementation Plan (SIP) consisting of the plan the Commonwealth will use to conduct the ongoing evaluation of its enhanced inspection and maintenance (I/M) program. With the submission of this program evaluation plan, Pennsylvania has remedied all conditions that EPA had placed upon approval of the Commonwealth's enhanced I/M program. Therefore, EPA is today also proposing to convert its conditional approval of Pennsylvania's enhanced I/M program SIP revisions to full approval, in accordance with the requirements of the Clean Air Act. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is both approving the SIP submittal and converting its conditional approval to a full approval as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. Details of EPA's evaluation of the Commonwealth's SIP revisions are included in a technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 19, 1999.

ADDRESSES: Written comments must be addressed and sent in hard copy to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies are also available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, at the EPA Region III address above, or by e-mail at Rehn.Brian@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–15164 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–3039b; FRL–6357–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Decorative Surfaces, Brake Shoe Coatings, Structural Steel Coatings, and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Maryland State Implementation Plan (SIP). The revisions concern the control of volatile organic compound (VOC) emissions from decorative surface manufacturing, brake shoe coating operations, structural steel coating operations, and digital imaging. EPA is proposing these revisions to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect.

EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 19, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, (215) 814–2095, at the EPA Region III address above, or by e-mail at donahue.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–15160 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0027b, CO–001–0028b, and CO–001–0033b; FRL–6358–7]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Revisions Regarding Negligibly Reactive Volatile Organic Compounds and Other Regulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA approves three revisions to the Colorado State Implementation Plan (SIP). The SIP revisions being approved include: an update to the State's list of negligibly reactive volatile organic compounds (VOCs) to add acetone. The State also consolidated the list of negligibly reactive VOCs from Regulations No. 3 and 7 into the Common Provisions Regulation. These revisions were submitted for approval on September 16, 1997; a clarification to the definition of ''applicable requirement'' and corrections of typographical errors in parts A and B of Colorado Regulation No. 3. These revisions were also submitted on September 16, 1997; and an update to the list of negligibly reactive VOCs in the Common Provisions Regulation to add perchloroethylene. The State also repealed its requirements in Regulation No. 7 that required control of VOC emissions from dry cleaning facilities using perchloroethylene as a solvent. These revisions were submitted for approval on August 19, 1998.

In the ''Rules and Regulations'' section of this **Federal Register**, we approve the State's submittals as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the preamble of the direct final rule. If no adverse comments are submitted, we will not take further action on this proposed rule. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before before July 19, 1999.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–15162 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6362–5]

RIN 2060–ZA07

Assessment of Visibility Impairment at the Grand Canyon National Park: Advance Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is providing advance notice of proposed rulemaking regarding visibility impairment at the Grand Canyon National Park (GCNP) and the possibility that the Mohave Generating Station (MGS) in Laughlin, Nevada may contribute to that impairment. The purpose of this advance notice is to explain provisions in the Clean Air Act and EPA regulation for protecting visibility in national parks and wilderness areas. This notice also describes the Department of the Interior (DOI) certification of visibility impairment at the Grand Canyon and the statement made by the Department that it believes the MGS is contributing to this impairment. This notice also presents a summary of the methodologies and results of Project MOHAVE, the study which evaluated the impacts of emissions from the MGS on visibility at the GCNP. In this notice, EPA is also requesting additional information that it should consider in determining whether visibility problems at the GCNP can be reasonably attributed to MGS, and if so, what, if any, pollution control requirements should be applied. EPA is not proposing any specific action regarding the MGS at this time but is providing background information and requesting additional information that the agency should consider.

DATES: Comments on this advanced notice of proposed rulemaking must be submitted no later than August 16, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler (Phone: 415–744–1251).

Docket: EPA has established a docket for this document, Docket Number A2–99–01. Materials related to the development of this notice have been placed in this docket. The docket is available for review at: EPA Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Regina Spindler, (415) 744–1251, to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

Electronic Availability: This document is also available as an electronic file on the EPA Region IX Web Page at http://www.epa.gov/region09.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Statutory and Regulatory Framework

1. Clean Air Act Visibility Requirements

Section 169A of the Clean Air Act (Act or CAA), 42 U.S.C. 7491, provides for a visibility protection program and sets forth as a national goal ''the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' (The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include reduction in visual range and atmospheric discoloration.) Section 169A requires EPA, after consultation with the Secretary of the Interior, to promulgate a list of ''mandatory Class I Federal areas'' where visibility is an important value. These areas include international parks, national wilderness areas and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Each mandatory Class I Federal area is the responsibility of a Federal Land Manager (FLM), the Secretary of the federal department with authority over such lands. Section 302(i) of the Act, 42 U.S.C. 7602(i). On November 30, 1979, EPA identified 156 such mandatory Class I Federal areas, including the Grand Canyon National Park in Arizona. 44 FR 69122.

Section 169A(a)(1) of the Act states that ''Congress declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' Section 169A(a)(4) requires EPA to promulgate regulations to assure reasonable progress toward meeting these national visibility protection goals. EPA's regulations must require each state with a mandatory Class I Federal area (or states with emissions that may reasonably be anticipated to cause or contribute to visibility impairment in a mandatory Class I Federal area) to revise the applicable implementation plan for that state (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national visibility protection goal. CAA section 169A(b)(2), 42 U.S.C. 7491(b)(2). The SIP revisions for these subject states must require each existing major stationary source [1] that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in a mandatory Class I Federal area to install and operate ''best available retrofit technology'' (BART) for controlling emissions from such source to eliminate or reduce visibility impairment. CAA section 169A(b)(2)(A), 42 U.S.C. 7491(b)(2)(A). Pursuant to section 169A(b)(2)(B) of the Act, 42 U.S.C. 7491(b)(2)(B), EPA's regulations must further require these states to include long term strategies in their SIP revisions for making reasonable progress toward meeting the national goal. Section 110(a)(2)(J) of the Act, 42 U.S.C. 7410(a)(2)(J), provides a corollary provision that requires SIPs to meet the visibility protection requirements of part C of the Clean Air Act.

2. EPA's Visibility Regulations

On December 2, 1980, EPA promulgated what it described as the first phase of the required visibility regulations, codified at 40 CFR 51.300–307. (45 FR 80084). These visibility regulations apply to 36 states, including Nevada, that contain mandatory Class I Federal areas. The visibility regulations require these 36 states to comply with the requirements set forth above, including (1) coordinating development of SIP requirements with appropriate FLMs; (2) developing a program to assess and remedy visibility impairment from new and existing sources; (3) developing a long-term strategy (10–15 years) to assure reasonable progress toward the national visibility goal; (4) developing a visibility monitoring strategy to collect information on visibility conditions; and (5) considering in all aspects of visibility protection any ''integral vistas'' (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area) identified by the FLMs as critical to a visitor's enjoyment of the Class I area. 40 CFR 51.300–307.[2]

An FLM may, at any time, certify to a state that impairment of visibility exists in a mandatory Class I Federal area. 40 CFR 51.302(c). If the FLM certifies such impairment at least 6 months prior to submission of a revised SIP, an affected state must (1) identify each existing stationary facility which may ''reasonably be anticipated to cause or contribute'' to any impairment which is ''reasonably attributable to that existing stationary facility,'' and (2) analyze and determine what emission limitation represents the ''best available retrofit technology'' at each such facility. 40 CFR 51.302(c)(4). Visibility impairment is ''reasonably attributable'' to a facility if it is ''attributable by visual observations or any other technique the state deems appropriate.'' 40 CFR 51.301(s). The state must also include in its plan an assessment of visibility impairment and a discussion of how each element of the plan relates to preventing future or remedying existing impairment in any mandatory Class I Federal area in the state. 40 CFR 51.302(c)(2)(ii). The visibility regulations also provide for periodic review, and revision as appropriate, of the long-term strategy for making reasonable progress toward the visibility goals at a minimum frequency of every three years. 40 CFR 51.306(c). The 36

[1] For purposes of the visibility protection requirements, the term ''major stationary source'' in the statute generally means any of a list of 26 different categories of stationary sources of air pollutants, which has the potential to emit 250 tons per year or more of any air pollutant. CAA section 169A(g)(7), 42 U.S.C. 7491(g)(7). The statutory provisions apply to such ''major stationary sources'' which were not in operation prior to August 7, 1962, and were in existence on August 7, 1977. CAA section 169A(b)(2)(A), 42 U.S.C. 7491(b)(2)(A). The term ''existing stationary facility'' is defined to include these statutory criteria. In addition, the definition of ''existing stationary facility'' includes any reconstructed source and provides that fugitive emissions are included in determining the potential emissions from a source. 40 CFR 51.301(e).

[2] These visibility regulations only address the type of visibility impairment that is ''reasonably attributable'' to a single source or small group of sources. In 1980 when EPA promulgated these regulations, EPA deferred setting SIP requirements to address visibility impairment caused by ''regional haze'' (i.e., a widespread, regionally homogeneous haze from a multitude of sources which impairs visibility in every direction over a large area) due to the complexity and technical limitations inherent in attempting to identify, measure, and control this type of widespread visibility impairment. In 1993, the National Academy of Sciences concluded that ''current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility.'' EPA promulgated regulations to address regional haze on April 22, 1999.

affected states were required to submit revisions to their SIPs to comply with these requirements by September 2, 1981. 40 CFR 51.302(a)(1).

3. Federal Implementation Plans for Visibility Protection

Most states did not meet the September 2, 1981 deadline for submitting a SIP revision to address visibility protection. A number of environmental groups filed a citizen suit seeking to compel EPA to promulgate its own visibility implementation plans for the states that had failed to submit SIPs to EPA, pursuant to section 110(c) of the Act. In the final rule published on November 24, 1987, EPA disapproved the SIPs of 29 states, including Nevada, for failure to comply with the visibility SIP requirements of 40 CFR 51.300–307. In order to implement the visibility protection program, EPA promulgated a federal implementation plan (FIP) for each state that failed to submit a visibility plan, including Nevada. 52 FR 45132 (November 24, 1987) codified at 40 CFR 52.27, 52.29 and 52.1488. *See* also 40 CFR 52.26 and 52.28.

In the preamble to the proposed FIP, EPA addressed certifications of existing visibility impairment (i.e., certifications of impairment that the FLM submitted prior to June 1, 1986) submitted by the FLM. The FLM certified that there was impairment in all Class I areas in the lower 48 states. EPA reviewed the certification for each Class I area, and determined that there was insufficient information or technical support to determine if the impairment existed within certain Class I areas, or to positively attribute impairment to any specific source or sources. In other Class I areas, research was underway but not yet completed to better characterize and identify the sources of impairment. In one other area, EPA had approved the SIP for visibility in that state and assumed that the certification of impairment would be addressed in the periodic report required by the state's visibility SIP. 52 FR 7802, 7805–7807 (March 12, 1987). For these reasons, EPA determined that, as of the final rulemaking (November 24, 1987), states were not required to include Best Available Retrofit Technology (BART) requirements in their implementation plans to address existing impairment. 52 FR 45132, 45133–45134. The EPA, however, acknowledged that information could become available in the future indicating impairment and that the FLM could certify the existence of visibility impairment at any time. Any future certifications of visibility impairment would be addressed by either the state or EPA (if the state SIP remains disapproved for visibility protection). 52 FR 45132, 45136.

In the visibility protection FIP, EPA established requirements for visibility monitoring, new source review (in attainment and nonattainment areas) and a long term strategy to make progress toward the national visibility protection goal. To fulfill these requirements, EPA is authorized to utilize such monitoring techniques that it deems appropriate and to promulgate such measures, including control strategies, that EPA deems necessary to make reasonable progress toward the national visibility goal. 40 CFR 52.26–52.29. As such, if a FLM makes a certification of visibility impairment involving a state that does not have an approved SIP, EPA determines whether visibility impairment in a mandatory Class I Federal area is reasonably attributable to an existing stationary facility (defined in footnote 1, above). As noted above, EPA acknowledged that the FLMs may certify visibility impairment in a Class I Federal area at any time, and provided that future certifications of visibility impairment by the FLMs would be addressed through the general plan requirements and the periodic review requirements set forth in 40 CFR 51.302(c), 51.306(c), 52.26, and 52.29(c). In the preamble to the visibility FIP, EPA noted that it ''may need to reassess the need for BART or other control measures'' to remedy future certifications of impairment by the FLM. 52 FR 7802, 7808 (March 12, 1987). In the preamble to the final rule, EPA noted that ''[A]ny certification of impairment made to a State, or to EPA in lieu of a State, would then be addressed in the periodic review of the visibility SIP or FIP.'' 52 FR 45132, 45136 (November 24, 1987).

If the state (or EPA) determines that impairment is reasonably attributable to an existing stationary facility, then the applicable plan's strategy for making progress toward the visibility goal would include a determination of BART for that existing stationary facility. 40 CFR 51.302, 52.26 and 52.29. See also 52 FR 7802, 7808 (March 12, 1987) and 52 FR 45132, 45136 (November 24, 1987). BART must be installed and operated as expeditiously as practicable, but in no case later than five years from the date that the state (or EPA) determines visibility impairment in a Class I Federal area is reasonably attributable to the source(s). (*See* discussion of BART in section III.B., infra.)

4. ''Reasonable Attribution'' Determination for Navajo Generating Station

The threshold for determining whether visibility impairment is reasonably attributable to a stationary facility was reviewed by the U.S. Court of Appeals for the Ninth Circuit in *Central Arizona Water Conservation District, et al.* v. *Environmental Protection Agency,* 990 F.2d 1531, 1541, cert. denied, 114 S. Ct. 94 (1993). In *CAWCD,* the petitioners challenged a final rule by EPA that visibility impairment was reasonably attributable to the Navajo Generating Station (NGS). EPA had found that visibility impairment in the Grand Canyon National Park could in part be reasonably attributed to sulfur dioxide emissions from the NGS and required installation and operation of pollution controls at the plant as part of the long term strategy for addressing visibility impairment. EPA acknowledged that NGS was not the only source of visibility impairment at the Grand Canyon. The petitioners argued, among other things, that EPA was limited to certain techniques for attributing impairment to a particular source, and that EPA overestimated the improvement in visibility expected from installing and operating controls at NGS. The Ninth Circuit denied the petition for review. The Court concluded that the record more than adequately supported EPA's conclusion that visibility impairment was attributable to NGS. The Court noted that the facts showing the existence of other sources of impairment

> hardly mean that EPA is without statutory authority to remedy the impairment attributable to NGS. Even if the Final Rule addresses only a small fraction of the visibility impairment at the Grand Canyon, EPA still has the statutory authority to address that portion of the visibility impairment problem which is, in fact, 'reasonably attributable' to NGS. Congress mandated an extremely low triggering threshold, requiring the installment of stringent emission controls when an individual source 'emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility' in a class I Federal area.

CAWCD, 990 F 2d at 1541. The Court further agreed that EPA had broad latitude to determine whether visibility impairment is ''reasonably attributable'' to a given source, and referred to a report by the National Research Council noting that ''Congress has not required ironclad scientific certainty establishing the precise relationship between a source's emissions and resulting visibility impairment.'' Id.

B. The Department of the Interior Certification of Visibility Impairment

As discussed above, a Federal Land Manager may at any time certify the existence of visibility impairment at a Class I Federal area. On November 14, 1985, the Department of the Interior certified to EPA the existence of visibility impairment in all Class I Federal areas within the Department's jurisdiction in the lower 48 states. On August 19, 1997, DOI sent a letter to EPA that reaffirmed the Department's 1985 certification of visibility impairment at the Grand Canyon National Park and stated DOI's belief that there is sufficient information available to support a ''reasonable attribution'' finding concerning the Mohave Generating Station (MGS). The DOI provided, as an attachment to its August 1997 letter, a document prepared by the National Park Service which summarizes published studies which DOI believes demonstrate that emissions from MGS contribute to visibility impairment at GCNP. The DOI requested that if EPA agreed with DOI's assessment of ''reasonable attribution,'' EPA comply with its statutory obligation to determine the best available retrofit technology for MGS. The DOI recommended that in doing so, EPA discuss the environmental, energy, and economic factors relevant to MGS with key interested parties and emphasized that the interests of the Navajo and Hopi tribes be fairly represented and protected in the decision-making process. Should EPA find that the MGS is reasonably anticipated to cause or contribute to visibility impairment at the GCNP, it must consider several factors, including available technology, costs of compliance, energy impacts, and non-air quality environmental impacts in determining appropriate pollution control requirements.

C. Mohave Generating Station

The Mohave Generating Station is a 1580 MW coal-fired power plant located in Laughlin, Nevada, approximately 75 miles southwest of the Grand Canyon National Park. It was built between 1967 and 1971. It currently emits over 40,000 tons of sulfur dioxide (SO_2) per year. MGS is operated by Southern California Edison, the majority owner of the plant. The Los Angeles Department of Water and Power, Nevada Power Company, and Salt River Project also own interests in the plant. The coal for the plant comes from the Black Mesa Coal Mine on the Hopi and Navajo Reservations via a 273-mile coal slurry pipeline. The mine, operated by Peabody Western Coal Company, is jointly owned by the Navajo Nation and the Hopi Tribe. Groundwater from an aquifer underlying the Navajo and Hopi reservations provides the water for the slurry pipeline.

II. Information Available for "Reasonable Attribution" Analysis

A. Project MOHAVE

As a result of EPA regulatory action on the Navajo Generating Station, described elsewhere in this notice, Congress directed EPA to conduct a tracer study to ascertain the extent to which the Mohave Generating Station contributes to visibility impairment at the Grand Canyon National Park. Congress created this directive through a budget line item in EPA's fiscal year 1991 budget. The tracer study was developed as a cooperative effort among EPA, the National Park Service, and the majority owners and operators of the MGS, Southern California Edison Company. This cooperative effort was named Project *M*easurement *Of H*aze *A*nd *V*isibility *E*ffects, more commonly referred to as Project MOHAVE.

Project MOHAVE was an extensive monitoring, modeling, and data assessment project designed to estimate the contributions of the MGS to haze at the GCNP. The field study component of the project was conducted in 1992 and contained two intensive monitoring periods (approximately 30 days in the winter and approximately 50 days in the summer). Tracer materials were continuously released from the MGS stack during the two intensive periods to enable the tracking of emissions specifically from MGS. Tracer, ambient particulate composition and SO_2 concentrations were measured at about 30 locations in a four-state region. Two of these monitoring sites, Hopi Point near the main visitor center at the south rim of the canyon and Meadview near the far western end of the national park, were used as key receptor sites representative of GCNP.

The process of identifying and quantifying the impact of MGS's emissions on visibility in GCNP used two types of assessment methodologies. The first method, known as receptor modeling, is an empirical assessment of the extensive data collected during the study to estimate the presence of pollutants and tracer emitted from MGS, and to estimate increases in particulate sulfur and light scattering. The advantage of this method is that it provides for modeled predictions to be verified with measured data. The disadvantage of this method is that measurements can only be taken at monitored locations during a limited time period. The second method relies on the application of mathematical models that attempt to estimate the transport and chemistry of MGS's emissions. The advantage of such models is that they can provide predictions at all locations for all times. The disadvantage of these models is that they can provide uncertain results due to the models' inability to accurately replicate the complex atmospheric chemical processes involved in the formation of visibility-impairing aerosols.

From the tracer data and the known ratio of tracer to SO_2 emission rates for MGS, we know that SO_2 emitted by MGS often reaches Meadview in sufficiently high concentrations to have the potential to cause impairment. The magnitude of the impairment that is attributable to MGS depends on how much of the SO_2 from the plant is converted to particulate sulfate. Sulfate particles in the atmosphere cause light to scatter which creates hazy conditions and poor visibility. Conversion of SO_2 to sulfate occurs by two different mechanisms: dry chemistry and wet chemistry. The rate of dry conversion is slow and greatest during the daylight hours. Wet chemistry is relatively fast but its occurrence is harder to predict since it requires interaction of the SO_2 emissions with cloud or fog droplets.

With one exception, the methods used in Project MOHAVE had to explicitly determine or use assumed rates of SO_2 to sulfate conversion for each time period during transport from MGS to GCNP. The models, therefore, relied in part on assumptions regarding how quickly emissions move through the atmosphere and how emissions interact with clouds, and yielded different results in terms of the amount of SO_2 converted to sulfate, which in turn produced different results regarding the magnitude of Mohave's impact on the Grand Canyon.

The conclusions from the various modelling methods were not always consistent as to which time periods during the study were most influenced by emissions from MGS. There is no consensus concerning which of the methods is more likely to be correct for any particular time period. Therefore, EPA intends to use these estimates to define a range for long-term and short-term impacts of the plant on visibility at GCNP.

EPA believes that the results of the Project MOHAVE study indicate that the Mohave Generating Station contributes to visibility impairment at the Grand Canyon National Park. The empirical data from the tracer study show that

emissions from MGS reach the Meadview site at the western end of GCNP in sufficient concentrations to, under certain meteorological conditions, convert to sulfate and cause visibility impairment. EPA notes that the study results show that the Mohave Generating Station is not the major cause of visibility impairment at the GCNP. However, the study indicates that because of the quantity of SO_2 emitted from the Mohave Generating Station and its proximity to the Grand Canyon, no other single point source is likely to have as great an impact on visibility in the Park.

The final Project MOHAVE report is available on the EPA, Region IX Web Page at http://www.epa.gov/region09/air/mohave.html and in Docket Number A2–99–01. Project MOHAVE operated under the joint technical and program management of the EPA and Southern California Edison Company in close partnership with the National Park Service. Numerous other organizations contributed to the operations and assessment work of the project. Since the end of the field study component of the project, data assessment and modeling efforts have been undertaken by the many participants and have lead to numerous papers and reports. By design these efforts have been the products of their respective authors and have not been endorsed as findings of Project MOHAVE.

B. Other Available Information

There are other studies pertaining to the Mohave Generating Station's impact on visibility at the Grand Canyon National Park. In its August 1997 letter to EPA reaffirming visibility impairment at the Grand Canyon and indicating that Mohave Generating Station is suspected of contributing to that impairment, DOI referenced several published papers on this topic as well as the 1993 summary of monitoring data from the IMPROVE network, the inter-agency visibility monitoring system. The papers referenced included ''Comparison of Two Back Trajectory Techniques for Source Apportionment'' by Gebhart, Malm, and Iyer, June 1993; ''Receptor Model Applied to Patterns in Space (RMAPS) Part II—Apportionment of Airborne Particulate Sulfate from Project Mohave'' by Henry, 1997; and ''Examining the Relationship Among Atmospheric Aerosols and Light Scattering and Extinction in the Grand Canyon Area'' by Malm, Molenar, Eldred, and Sisler, August 1996. The general 1993 review of IMPROVE monitoring data and trends showed that sulfur-containing particles are an important component of the human-caused visibility impairment at Grand Canyon National Park (20 to 30 percent on average). The August 1996 paper confirms this by finding that sulfur is responsible for approximately 30 percent of visibility impairment. Finally, the June 1993 paper, which analyzes data collected over a 13-year period, indicates that the majority of impairment at the Grand Canyon is due to transport from the southwest. These papers are available in Docket Number A2–99–01.

III. Request for Public Comment

EPA is requesting public comment on two matters. The Agency is seeking information that it should consider in determining whether visibility impairment at the Grand Canyon National Park is ''reasonably attributable'' to emissions from the Mohave Generating Station. EPA is also seeking information that it should consider in conducting a ''Best Available Retrofit Technology'' analysis, should it find that impairment is ''reasonably attributable'' to the MGS.

Any determination that impairment at the GCNP is ''reasonably attributable'' to MGS, and any analysis of BART for the facility would occur through a future EPA rulemaking, including an opportunity for the public to comment on EPA's proposed actions.

A. ''Reasonable Attribution'' Determination

In determining whether to propose that visibility impairment at the Grand Canyon National Park is ''reasonably attributable'' to the Mohave Generating Station, EPA will consider all available information, including the results of the Project MOHAVE study and the papers referenced in the August 1997 letter from DOI to EPA. With today's notice, EPA is soliciting any additional information to be considered in assessing the MGS impact on visibility at GCNP. This may be additional analyses of Project MOHAVE data, or new information related to assessing impacts over other time periods.

B. ''Best Available Retrofit Technology'' Analysis

''Best Available Retrofit Technology'' means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established on a case-by-case basis, taking into consideration (1) the technology available, (2) costs of compliance, (3) the energy and non-air quality environmental impacts of compliance, (4) any pollution control equipment in use or in existence at the source, (5) the remaining useful life of the source, and (6) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.301(c) and 52.26(b)(2), and CAA section 169A(g)(2), 42 U.S.C. 7491(g)(2). Pursuant to section 169A(b) of the Act, 42 U.S.C. 7491(b), and 40 CFR 51.302(c)(4)(iii), the emission limitation representing BART for fossil fuel-fired power plants with a generating capacity in excess of 750 megawatts (MW) must be determined pursuant to guidelines set forth by the Administrator of EPA. The procedures for conducting a BART analysis are set forth in ''Guidelines for Determining Best Available Retrofit Technology Analysis for Coal Fired Power Plants and Other Stationary Facilities' (''BART Guidance''), EPA publication EPA–450–3–8–009b.

With today's notice, EPA is soliciting information to be considered in establishing BART for MGS, should EPA determine that visibility impairment at the GCNP is ''reasonably attributable'' to the facility. Information that EPA is seeking includes analyses of information related to the six factors listed in the paragraph above.

IV. Activities Related to the Mohave Generating Station and Visibility at the Grand Canyon National Park

A. Grand Canyon Visibility Transport Commission

Congress directed EPA to establish the Grand Canyon Visibility Transport Commission to assess information pertaining to adverse impacts on visibility at the GCNP and to make recommendations to EPA on measures that should be taken to remedy such adverse impacts. The Commission, which was established in 1991, conducted an extensive review of the scientific, technical, and other information with assistance from a range of governmental, business, tribal, and environmental interests. On June 10, 1996, the Commission issued a report to EPA containing its recommendations for protecting and improving visibility in Class I areas of the Colorado Plateau, including the GCNP. The recommendations covered a wide range of control strategy approaches, planning and tracking activities, and technical findings. Regarding stationary sources, the Commission recommended that EPA establish SO_2 emissions targets for the year 2000 and the year 2040, with interim targets to ensure steady and

continuing emission reductions. The Commission also recommended development of market-based regulatory programs if emission targets are not met. While the Commission report did not make any specific recommendation regarding emission reductions from any specific stationary source, such as the Mohave Generating Station, it did strongly encourage EPA to complete the Project MOHAVE source attribution study and to take action consistent with the results of that study within twelve months of its completion.

B. Public Meeting

The EPA has been working in close partnership with the Secretary's Office of the Department of the Interior and the National Park Service Air Resources Division to address issues concerning the Mohave Generating Station. During the past year and a half, EPA and DOI have met with various parties with an interest in the future of the Mohave Generating Station. On January 8 and 9, 1998, EPA and DOI held a public meeting in Las Vegas, Nevada to present information and seek input on the issues, interests, and concerns related to the Mohave Generating Station and visibility impairment at the Grand Canyon National Park. Several informational panels outlined the issues, provided background on visibility science and EPA's visibility regulations, discussed issues associated with utility restructuring that affect the plant, and outlined options for reducing emissions at the plant.

Approximately 90 people representing a variety of affected groups attended the meeting. Representatives from local governments and businesses stressed the importance of MGS to the local economy and characterized MGS as a good corporate citizen that supported schools and civic projects. One private citizen expressed concern about the health effects of emissions from the plant, noting that a plume of smoke was always visible from the plant. Speakers for environmental groups stated that MGS is a significant contributor to haze at the Grand Canyon National Park, emits pollutants at a higher level than other power plants, and is at a competitive advantage to other plants that have installed pollution controls. The environmental groups believe that there is enough information available currently to show that MGS is affecting visibility at the Grand Canyon National Park and that EPA should act immediately to require pollution controls. The Navajo Nation expressed concerns about air and water quality but highlighted the importance of MGS to the Navajo economy, which depends significantly on revenues from coal sales to the plant. Southern California Edison stated that it wants to protect the environment while maintaining the economic viability of the plant. SCE stated that at the current market price for electricity, the cost of installing control equipment at the plant would make the plant unprofitable. Union representatives, MGS employees, and companies that provide raw materials to MGS highlighted their reliance on MGS and emphasized that continued operation of the plant is important to state, local, and tribal economies and living standards.

In addition to the comments made at the public meeting in Las Vegas, EPA has received hundreds of letters from people expressing concern about visibility impairment at the Grand Canyon and urging EPA to require installation of pollution controls at the Mohave Generating Station.

C. Grand Canyon Trust/Sierra Club Lawsuit

On February 19, 1998, Grand Canyon Trust (GCT) filed a citizen suit in the federal district court for the District of Nevada against the owners of the Mohave Generating Station. GCT alleged that the defendant had violated several SIP provisions that apply to the Mohave Generating Station. GCT included allegations that the Mohave Generating Station had exceeded emission limits in the Nevada and Clark County SIPs for opacity and sulfur dioxide, and had failed to conduct necessary reporting. Sierra Club and the National Parks and Conservation Association subsequently joined GCT as plaintiffs in the citizen suit. The defendants have filed a motion to dismiss the suit and a motion for partial summary judgement. The plaintiffs have filed an opposition to the motion to dismiss and a motion for partial summary judgment. These motions are currently pending before the court.

D. Environmental Defense Fund Letter

The Environmental Defense Fund (EDF) submitted a letter to the Regional Administrator of EPA Region IX in November 1998 noting its concern over EPA's failure to conduct a review of the visibility protection plan for the state of Nevada. As part of the long term strategy to address visibility protection, EPA is required to conduct a review of the visibility protection plan every three years to determine whether the plan is sufficient or if additional measures are necessary for visibility protection. 40 CFR 52.29(c)(4). (Because the state of Nevada does not have an approved SIP for visibility, EPA is required to assume responsibility for visibility protection until such time as the State submits, and EPA approves, a SIP that adequately provides for visibility protection.) Pursuant to 40 CFR 52.29, EPA must include in its triennial report an assessment of the progress made in remedying existing impairment, changes in visibility since the last report, whether additional measures are necessary to assure reasonable progress toward the national visibility goal and any progress achieved in implementing BART. EDF notes that EPA has not updated the visibility protection plan or conducted any of the required reviews, even though the Department of the Interior has notified EPA of visibility impairment at the Grand Canyon National Park and has submitted information indicating that such impairment is attributable to emissions from the Mohave Generating Station. EDF further refers to studies that have been conducted (including Project MOHAVE) which EDF believes indicate that emissions from the Mohave Generating Station contribute to visibility impairment. On April 20, 1999, EDF sent EPA notice of its intent to sue the Agency, pursuant to section 304(b)(1) of the Act, 42 U.S.C. 7604(b)(1), and 40 CFR part 54. EDF's notice of intent to sue made the same claims as contained in its November 1998 letter to EPA.

E. Southern California Edison Proposal

On December 11, 1998, Southern California Edison and the other owners of the Mohave Generating Station announced that by 2008, they would either install emission control equipment at the plant or shut the plant down. The control equipment would include sulfur-dioxide scrubbers and bag houses, devices designed to reduce particulate matter emissions. The MGS owners stated that installations could begin by 2005 and that work would be completed no later than 2008. The owners noted that the plant must be able to operate economically with additional emission control devices; otherwise the plant would not operate beyond 2008. The announcement indicated that the MGS owners would participate in collaborative discussions with interest groups, including the Hopi tribe, the Navajo Nation, environmental organizations, communities near the plant, plant employees, and state and federal agencies to ''speed resolution of key environmental issues regarding the Mohave plant.''

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Due to potential policy issues this action is considered a significant regulatory action and therefore was reviewed by OMB. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604 and 605(b). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This advance notice of proposed rulemaking will not have a significant impact on a substantial number of small entities because it will not create any new requirements for any entity. The notice merely presents background information and requests input from the public. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, this advance notice of proposed rulemaking does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides.

Dated: June 11, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–15435 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA121–4088b; FRL–6361–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 1990 NOx Base Year Emission Inventory for the Philadelphia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan (SIP) revision request that the Commonwealth of Pennsylvania submitted on July 31, 1998. The revision concerns the 1990 oxides of nitrogen (NOx) base year inventory for the Pennsylvania portion of the Philadelphia severe ozone nonattainment area. EPA is proposing approval of the Philadelphia area 1990 NOx base year inventory as a revision to Pennsylvania's SIP in accordance with the requirements of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because we view this as a noncontroversial submittal and anticipates no adverse comments. We set out our rationale for our approval in the direct final rule. If we do not receive adverse comments, we will not take further action on this proposed rule. However, if we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 19, 1999.

ADDRESSES: You should mail written comments to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You can inspect copies of the documents relevant to this action during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or via e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: For more information, please see the direct final rule with the same title, pertaining to Pennsylvania's 1990 NOx base year inventory for the Philadelphia area, located in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: June 2, 1999.

Thomas J. Maslany,

Acting Regional Administrator, Region III.

[FR Doc. 99–15268 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 070–1070b; FRL–6359–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the state of Iowa's section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated, and the direct final rule will become effective. If EPA receives

relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 19, 1999.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

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

Dated: June 1, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–15166 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX–108–1–7408b; FRL–6361–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: We propose to approve the section 111(d) Plan submitted by the Texas Natural Resource Conservation Commission on November 3, 1998, to implement and enforce the Emissions Guidelines (EG) for existing municipal solid waste (MSW) landfills. The EG require States to collect landfill gas from large MSW landfills. In the final rules section of this **Federal Register**, we are approving the State Plan as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Texas State Plan.

DATES: Comments must be received by July 19, 1999.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Texas Natural Resource Conservation Commission offices, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–15266 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[LA–51–1–7413b; FRL–6360–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We propose to approve the section 111(d) Plan submitted by the Louisiana Department of Environmental Quality on December 30, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (MWIs). The EG require States to develop plans to reduce air emissions from MWIs. In the final rules section of this **Federal Register**, we are approving the State Plan as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Texas State Plan.

DATES: Comments on this proposed rule must be postmarked by July 19, 1999.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Louisiana Department of Environmental Quality offices, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–15264 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[ND–001b; FRL–6360–4]

Clean Air Act Proposed Full Approval of Operating Permit Program; State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The EPA is taking direct final action to approve the operating permit program submitted by the State of North Dakota. North Dakota's program was submitted for the purpose of meeting the Federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is promulgating full approval of the North Dakota program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Comments must be received in writing on or before July 19, 1999.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business at the above address. Copies of the State documents relevant to this action are available for public inspection at the North Dakota Department of Health. Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, ND 58504–5264.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, EPA, Region VIII, (303) 312–6435.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules section of this **Federal Register**.

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

Dated: June 2, 1999.

Carol Rushin,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–15270 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6359–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Davis Glocester-Smithfield Regional (GSR) Landfill site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces its intent to delete the Davis GSR Landfill site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Rhode Island have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

DATES: Comments concerning this site may be submitted on or before July 19, 1999.

ADDRESSES: Comments may be mailed to: Anna Krasko, Remedial Project Manager, U.S. EPA Region I, 1 Congress Street, Suite 1100 (HBO), Boston, MA 02114–2023.

Comprehensive information on this Site is available through the public docket which is located at EPA's Region I Records Center and is available for viewing by appointment only at 90 Canal Street, 1st Floor, Boston, MA 02114, (617) 918–1440.

A copy of the public docket is also available for viewing at the Davis GSR Landfill site information repository at: E. Smithfield Public Library, 50 Esmond Street, N. Smithfield, RI (401) 231–5150.

FOR FURTHER INFORMATION CONTACT: Anna Krasko, Remedial Project Manager, U.S. EPA Region I, 1 Congress Street, Suite 1100 (HBO), Boston, MA 02114–2023, (617) 918–1232 or Matthew DeStefano, Project Manager, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767, (401) 222–2797.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region I announces its intent to delete the Davis GSR Landfill site, N. Smithfield, RI, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System (HRS).

The EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Davis GSR Landfill site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1), sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

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

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

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

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment. In the case of this Site, the baseline risk assessment concluded that conditions at the Site pose no unacceptable risk to human health and the environment. Consistent with the September 29, 1997 Record of Decision, EPA and the State will conduct residential well testing in the vicinity of the Site for a period of at least five years. If new information becomes available which indicates a need for further remedial action, EPA may initiate such actions. EPA may also support further response activities which could be initiated by the State in the interest of public health.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL also should be used before sites are deleted. Comments also were received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Formal notice and comment procedures for deleting sites from the NPL were subsequently added as a part of the March 8, 1990 amendments to the NCP (55 FR 8666, 8846). Those procedures are set out in 40 CFR 300.425(e)(4) of the NCP. Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

Upon determination that at least one of the criteria described in 40 CFR 300.425(e)(1) has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of this Site:

(1) EPA Region I issued a Record of Decision which documented that no further remedial action is necessary for the Davis GSR Landfill site and that no statutory five year review will be undertaken. The ROD also called for residential well monitoring for at least five years and the data evaluation by EPA and the State to determine possible need for further monitoring at the site beyond the initial five years;

(2) The State of Rhode Island has concurred with the Record of Decision and the proposed deletion decision;

(3) Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties; and

(4) The Region has made all relevant documents available for public review in the Regional Office and the local Site information repository.

This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the Site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repository and deletion docket.

Upon completion of the 30-day public comment period, EPA Region I will evaluate these comments before the final decision to delete. The Region will prepare a Responsiveness Summary, which will respond to each significant comment and any significant new data received during the public comment period. This response document will be made available to the public at the information repository. If EPA still determines that deletion from the NPL is appropriate after receiving public comments, a final notice of deletion will be published in the **Federal Register** and the final deletion package will be placed in the information repository.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for deleting the Davis GSR Landfill site from the NPL.

A. Site Background and History

The 58-acre Site includes a 21-acre landfill located in a semi-rural area off Tarkiln Road in the Towns of Glocester and Smithfield, Rhode Island. This Site is not Davis Liquid Waste or Davis Tire Pile Site, which are also located in Smithfield, Rhode Island. The GSR Landfill was first licensed by the State to receive municipal waste in 1974, and acceptance of waste ceased in 1982. In 1978, after the public expressed concern about operation of this privately owned landfill, the State declined to renew the landfill's license citing numerous violations and failure to comply with previous orders. Numerous legal actions to close the landfill ensued, and the State Supreme Court ruled in favor of the State in 1982. At that time the landfill had stopped accepting solid waste, but the engineered cover was never constructed. As a result of several Volatile Organic Compounds being detected in the early 1980s in several on-site monitoring wells and one nearby residential well, the Davis GSR Landfill Site was added to the NPL in 1986.

From 1991 to 1993, after site access had been finally obtained, EPA conducted an extensive Remedial Investigation (RI) to determine the nature and extent of contamination and to assess potential risks to human health and the environment. Results of this investigation concluded that the landfill appeared to be the source of various chemicals, the spread of which was limited to the immediate vicinity of the landfill with no evidence of contamination downgradient. No distinct plume of groundwater contamination was found to be emanating from the landfill. None of the residential well tests conducted periodically since the early 1980s, including the latest post-ROD testing in February of 1999, confirmed the presence of elevated levels of contaminants.

Based on the results of the RI and risk assessment, EPA issued a record of Decision (ROD) for the Site on September 29, 1997. The ROD documented the decision that no further remedial action was necessary at Davis GSR Landfill site because the conditions at the Site pose no unacceptable risks to human health or the environment.

B. Characterization of Risk

Based on the levels of organics and metals that were detected in the groundwater, soil, surface water, sediment and air, and the unlikely future exposure to the groundwater in a limited area in the wetlands immediately adjacent to the landfill, EPA has determined that the potential for adverse ecological and human health risks from site groundwater or other media to be unlikely. Exposure pathways considered for the Davis GSR Landfill Site risk assessment, assuming no remedial actions were taken, included ingestion of groundwater, contact with Site soils, surface water, and sediment, and inhalation of landfill gas.

No current health risks are associated with exposure to groundwater at the Site since the contaminated groundwater is not used for drinking water. Elevated levels of benzene and manganese were detected at the Site in the wetlands between the landfill and the Nine Foot Brook. However, exposure to the groundwater as a drinking water source in this limited area is unlikely due to the steep topography and proximity to wetlands which would preclude development. Although the risk associated with arsenic is at the upper end of the acceptable risk range (i.e., 10^{-4}), the contaminant is at levels below those established as safe in the Safe Drinking Water Act. The cancer

risk is largely attributable to one contaminant, arsenic, although benzene and beryllium also contribute but at lower levels. Manganese is the main contributor to the noncarcinogenic hazard index of 8.4, which may present a level of concern for a human health drinking water scenario, assuming that groundwater at this location is ingested as a sole source of drinking water. This is a very conservative estimate of future exposure, however, as this location is immediately adjacent to the landfill and is not likely to be used for future water supplies due to the existing topographical and wetland considerations.

No adverse health effects associated with the inhalation of landfill gas, and ingestion of, or contact with, the contaminants in surficial soils, surface water and sediments were found, assuming conservative exposure to children who may trespass and wade in the wetlands and have skin contact with contaminants. All current and future risks attributable to these exposures were below the lower end of the acceptable risk range (i.e., 10^{-6}). Thus, even if the Site in the future is used for recreational or residential purposes, the resulting frequency of exposure would not pose unacceptable risk to human health.

EPA also evaluated the potential risk to the environment posed by contamination at the site. Contaminant concentrations in sediments found in the Davis GSR wetlands and surface waters were compared to Sediment Quality Criteria (SQC) as part of the ecological risk assessment. Given the abundance of surrounding water bodies and wetlands, it is unlikely that a reduction in viable wetland habitat, due to sediment contamination associated with the Davis GSR Landfill, would adversely impact any flora and fauna populations. The levels of contaminants found in the landfill surface soils also do not appear likely to pose significant ecological risk. Results of a conservative food chain modeling also indicated no adverse effects, and therefore, did not suggest the need for cleanup.

The Record of Decision (ROD) was signed by the Director of the Office of Site Remediation and Restoration on September 29, 1997. The No Action ROD recommendation includes: No further remedial action. Long-term monitoring will be conducted.

Based on the information currently available, EPA, with the concurrence of the State of Rhode Island, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures at this time is not appropriate.

Dated: May 21, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–15172 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6360–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Old Inland Pit NPL site from the National Priorities List update: request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Old Inland Pit NPL Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before July 19, 1999.

ADDRESSES: Comments may be mailed to: Beverly Gaines, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101.

Comprehensive information on this Site is available through Ecology which is available for viewing at the Old Inland Pit Site information repositories at the following locations:

Washington Department of Ecology, Eastern Regional Office, 4601 North Monroe Street, Suite 202, Spokane, WA 99205–1295.

Spokane Public Library, 12004 E. Main Avenue, Spokane, WA 99205–5193.

The deletion docket for the deletion of the Old Inland Pit Site is available through EPA at the following locations: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Superfund Records Center, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101, (206) 553–1066.

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I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Old Inland Pit Site (''Site'') at 3500 N. Sullivan Road, Spokane, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. The Old Inland Pit Site does not present a significant threat to human health or the environment. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for federal Fund-financed remedial actions or state action under the Model Toxics Control Act (MTCA) in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Old Inland Pit Site (''Site'') at 3500 N. Sullivan Road, Spokane, Washington, from the NPL. EPA will accept comments on the plan to delete this site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Old Inland Pit Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that ''releases'' (sites) may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall

consider, in consultation with the state, whether any of the following criteria have been met:

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

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

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

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of human health and the environment. In the case of the Old Inland Pit Site, a five year review is not required at this site under CERCLA because no hazardous substances remain on site above appropriate cleanup levels, and no conditional points of compliance have been established. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking system.

III. Deletion Procedures

The following procedures have been used for the intended deletion of this Site:

(1) Ecology has issued a Final Closeout Report (FCOR) which documented the completion of all appropriate remedial activities; (2) Ecology has issued a letter certifying that no further remedial action is expected and that the remedy is protective of human health and the environment; (3) EPA has concurred with Ecology's finding that the remedy is protective of human health and the environment; (4) Ecology has concurred with the proposed deletion decision; (5) A notice has been published in the local newspaper and distributed to appropriate Federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (6) All relevant documents have been made available for public review in the local site information repositories.

Deletion of the Site from the NPL does not in itself, create, alter or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425(e) (3) states that deletion of a site from the NPL does not preclude eligibility for future Federal Fund-financed response actions or future actions under the state's MTCA.

EPA's Regional Office will accept and evaluate public comments on the EPA's Notice of Intent to Delete before making a final decision. The Agency will prepare a Responsiveness Summary if any significant public comments are received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be placed in the local repositories and made available to local residents by the Regional Office.

IV. Basis of Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete the Site from the NPL.

A. Site Background

The ten-acre Old Inland Pit was operated by Inland Asphalt as a sand and gravel source from 1969 to 1978. Materials were excavated to a depth of 35 to 50 feet below ground surface. Spokane Steel Foundry Company (SSFC), located just east of the pit, disposed of waste foundry sands and baghouse dust from May 1978 to May 1983. The sands were from metal molding operations, and the baghouse dust was generated from sand sieving, sandblasting operations, and the residue of electric arc furnaces. Approximately 200 tons of baghouse dust was thought to have been disposed of in the pit. Foundry sand disposal continued until 1986. In addition to the foundry dusts, permission was also given to Inland Asphalt and Central Premix to dispose of construction debris, and to Quarry Tile Company for disposal of broken decorative clay tiles. Combined dumping from all sources raised the bottom level of the pit to a uniform 35 feet below ground surface.

Concerns that the baghouse dust was potentially a hazardous waste first arose in 1981. In May 1983, Ecology collected four baghouse dust samples from the SSFC plant baghouses for waste classification. Two samples were from the sandblasting/sand sieving operations, and two were from the electric arc furnaces. All materials passed the EP Toxicity test, but the furnace dusts failed the Static Basic Acute Fish Toxicity test (fish bioassay) and were classified as state-only dangerous waste under the authority of WAC 173–303. The foundry sands from the sieving/abrader operations were not classified as dangerous waste.

In August 1984, Ecology & Environment (E&E) conducted a Preliminary Site Assessment (PSA) for the Environmental Protection Agency (EPA), which consisted of interviews with SSFC personnel, a site visit, and soil sampling. PSAs are done to estimate threats posed by sites to human health and the environment. Samples were analyzed for inorganics, pesticides, and volatile and semi-volatile organics; elevated concentrations of copper, zinc, nickel, and chromium were detected. The results of the PSA were used to complete a Hazard Ranking System (HRS) scoring. The site scored 29.45, high enough to be nominated to the National Priorities List (NPL) in 1986. The nomination was finalized in February of 1990.

In July 1986, Reed Corporation was contracted by CH&E Investments to assess the data gathered during the PSA, collect data to confirm those samples, and provide additional site characteristics. E&E collected additional soil and dust samples for the EPA in late 1988 to assess the distribution and concentration of potential contaminants on the site. Both sample sets were analyzed for inorganics, organics, and pesticides.

E&E, under contract to Ecology, collected additional soil samples and installed four groundwater monitoring wells in May of 1991. Groundwater samples were collected from these wells in May 1991 and April 1993. Those groundwater samples and the splitspoon samples collected during well installation were analyzed for the same groups of analyses as previous samples.

On April 20, 1995, the PLPs entered into an Agreed Order with Ecology after public notice and opportunity to comment. Dames & Moore began site investigation on behalf of the PLPs. Further soil sampling was performed. Groundwater samples were taken in January 1995, March 1996, June 1996, and September 1996. Additional dust samples were also collected from the pit floor in September 1995 for a second fish bioassay test. Those test results indicated the material would no longer be characterized as a state dangerous waste, likely due to the difference in sampling location. The complete history of site investigations and sampling results is presented in the Final Phase I Remedial Investigation (RI) (Dames & Moore, 1998).

B. Conclusions of Studies Conducted at the Site

The RI was completed by Dames & Moore, contractors to CH&E Investments, in August of 1998. The conclusions reached by the studies are summarized below:

- The site is located in an historically industrial area, with current and future use expected to continue as such;
- Approximately 200 tons of furnace baghouse dust was disposed of during a five-year period, mainly in the northeast and south central sections of the pit;
- Fish bioassay testing initially designated the furnace dust as a state-only dangerous waste, but repeat testing has shown that the waste no longer classifies as such;
- Contaminants of potential concern in soils were inorganics, especially arsenic, chromium, zinc, and aluminum. These were all detected at levels below applicable cleanup standards. Groundwater has not been affected by waste disposal practices at the Site.

The site overlies the Spokane Valley-Rathdrum Prairie Aquifer, the sole source of water for the greater Spokane area. Groundwater at the site is about 65 to 70 feet below ground surface, and flows from the northeast to the southwest towards the Spokane River. Materials at depth and near the surface are comprised of native sands and gravels. The surficial soils are a mixture of native deposits and backfilled material, including the foundry sands and baghouse dust.

Method C Industrial Soil Cleanup Levels, specified in the Washington State Model Toxics Control Act (MTCA), were used since the site and the surrounding properties will remain industrial. Method C Industrial cleanup levels are protective of exposures at a cancer risk of $1x10^{-6}$ an a hazard index of 1. The highest possible use of groundwater is drinking water, so Method B Groundwater cleanup levels were applied. Method B cleanup levels are also protective of exposures at a cancer risk of $1x10^{-6}$ and a hazard index of 1. The concentrations of inorganics in both groundwater and soil are below their respective risk-based cleanup levels. Details of cleanup level development are presented in the Cleanup Action Plan issued by Ecology on January 20, 1999.

C. Remedial Construction Activities

Since there are no contaminants exceeding cleanup levels, no contamination of groundwater, and minimal risks from hazardous materials remaining on site, the Cleanup Action Plan required no remedial activities. MTCA requires that where Method C Industrial Soil Cleanup Levels are used, a restrictive convenant must be placed with the deed. A restrictive convenant was placed with this property for that purpose, with the following restrictions: industrial use only, no withdrawal of water, maintenance of fences and locked gates, and no actions that may facilitate a release or create an exposure pathway.

D. Characterization of Risk

The site is located in an industrially-zoned area, surrounded by properties all currently used in an industrial capacity. Future use of the site and the surrounding properties is expected to remain similar to current usage. Therefore, no residential or commercial exposure scenarios are anticipated.

Contaminants of potential concern at the site include metals and non-metallic elements such as aluminum, copper, zinc, iron, arsenic, and magnesium. These elements are present in varying concentrations in the soils on-site. Vegetation in the form of weeds and grasses covers most of the soil surface limiting the potential for windblown soil transport.

A direct contact pathway exists between people and surface soils. Although a fence surrounds the site restricting access, future workers have the potential to be in direct contact with soils down to a depth of 15 feet. WAC 173–340–740(6)(c) specifies that 15 feet is a ''reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities.'' A deed restriction will alert future owners on restrictions on land use or development and risks associated with these activities.

Groundwater below the site has the potential to be affected by downward filtration of surface water through contaminated soils. However, sampling indicates that groundwater has not been contaminated and that leaching is not occurring. Therefore, the potential for ingestion of contaminated water due to site materials is unlikely.

Surface water is channeled to the pit floor where it percolates downward. Due to the nature of the soils, precipitation does not pond on or run off the surface. Transport of contaminated soils off-site via surface water is unlikely due to these features. Contact with temporarily ponded surface waters might happen during an extended precipitation event. Surface waters are not a permanent site feature, thus it represents an insignificant pathway.

E. Compliance Monitoring

According to MTCA, compliance monitoring is required for all cleanup actions. Compliance monitoring shall take place at the site to ensure that residual contaminants in site soils do not move or affect other site media. The compliance monitoring plan will consist of one year of groundwater sampling of wells MW–1 and MW–4 to confirm that aquifer remains unaffected by residual metals in site soils. Water samples will be collected quarterly beginning in February 1999 and tested for eight metals that were detected in previous groundwater sampling. Samples will be collected and analyzed using the same standard EPA methods as prior sampling, with similar techniques and QA/QC procedures. After one year, the data will be reviewed by Ecology to determine if compliance monitoring should continue.

F. Five-Year Review

A five-year review is not required at this site under MTCA or CERCLA because no hazardous substances remain on site above appropriate cleanup levels, and no conditional points of compliance have been established. Additional details on the compliance monitoring plan can be found in the Cleanup Action Plan.

G. Public Participation

Community input has been sought by Ecology throughout the cleanup process for the site. Community relations activities have included several public notices in local newspapers and routine publication of progress fact sheets. A copy of the Deletion Docket can be reviewed by the public at the EPA, Region 10 Superfund Records Center. The Deletion Docket includes this document, the CAP, and the Final Closeout Report. Comprehensive Site files are available for review at the Spokane Public Library, 12004 E. Main Avenue, Spokane, WA 99205–5193, and the Washington Department of Ecology, Eastern Regional Office, 4601 North Monroe, Suite 202, Spokane, WA 99205–1295. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

H. Applicable Deletion Criteria

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''responsible parties or other persons have implemented all appropriate response actions required''. EPA, with the concurrence of Ecology, has determined that this criteria for deletion has been met. EPA and Ecology

believe that no significant threat to human health or the environment remains because pathways of concern for exposure to contaminants no longer exist. If new information comes available that indicates that there is a significant threat to human health or the environment then EPA or Ecology can require or conduct additional remedial action, if appropriate. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

Dated: June 7, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–15274 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; FCC 99–122]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document examines a variety of measures intended to increase the efficiency with which telecommunications carriers use telephone numbering resources. The purpose of this effort is two-fold: to slow the rate of number exhaust in this country as evidenced by the ever-increasing rate at which new area codes are assigned; and to prolong the life of the North American Numbering Plan (NANP).

DATES: Comments are to be filed on or before July 30, 1999, and reply comments are due on or before August 30, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 16, 1999.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW, Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 72—17th Street, N.W., Washington, DC 20503 or via the Internet to fain5__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jared Carlson, (202) 418–2320 or email at jcarlson@fcc.gov or Tejal Mehta at (202) 418–2320 or tmehta@fcc.gov. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted on May 27, 1999, and released on June 2, 1999. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center. The complete text may also be obtained through the world wide web, at http:/www.fcc.gov/Bureaus/CommonCarrier/Orders, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control No.: None.

Title: Numbering Resource Optimization, CC Docket No. 99–200.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Proposed number of collections	Estimated time per respondents	Total annual response (hours)	Burden (Annual) (hours)
Verification of Need for Numbers Submissions:			
a. Quarterly Report	3000	48	144,000
b. Initial Codes	3000	1	3000
c. Growth Codes	3000	3	9000

Frequency of Response: Quarterly; on occasion.

Total Annual Burden: 156,000 hours.

Estimated Costs Per Respondent: $0.

Needs and Uses: In CC Docket No. 99–200, the Commission examines a variety of measures intended to increase the efficiency with which telecommunications carriers use numbering resources in order to slow the rate of number exhaust in this country. The Notice examines existing mechanisms for the administration and allocation of numbering resources, which are governed by industry-developed Central Office Code Guidelines. The Notice proposes certain verification measures designed to prevent carriers from obtaining numbering resources that they do not need in the near term. The Notice tentatively concludes that a more extensive, detailed and uniform reporting mechanism should be developed that will improve numbering utilization and forecasting on a nationwide basis. The Notice tentatively concludes that carriers should report utilization and forecast data on a quarterly basis and that the Commission should mandate that all users of numbering resources must supply utilization and forecast data to the NANPA. With respect to an applicant's ability to obtain initial codes, the Notice seeks comment on what type of showing

would be appropriate. The Notice seeks comment on whether applicants should be required to make a particular showing regarding the equipment they intend to use to provide service, the state of readiness of their network or switches, or their progress with their business plans, prior to obtaining initial codes, or whether any other type of showing should be required. Applicants for NXX codes currently are required to complete a Months-to-Exhaust Worksheet prior to applying for growth codes. The Notice seeks comment on whether requiring applicants to submit the Months-to-Exhaust Worksheet with an application for growth codes would be an adequate demonstration of need in order to obtain additional numbering resources. Alternatively, the Notice seeks comment on whether carriers should be required to demonstrate that they have achieved a specified level of numbering utilization (or fill rate) in the area in question before they may receive additional numbering resources. All the proposed collections will be used to prevent the premature exhaustion of numbering resources pursuant to the Commissions plenary authority over numbering set forth at 47 U.S.C. Section 251(e).

Synopsis of Notice of Proposed Rulemaking

1. In 1947, AT&T adopted the current nationwide numbering scheme, under which the ten-digit telephone number serves not only as a network ''address,'' but also conveys information to the network as to how phone calls should be routed and billed. A principal benefit of this system was that it permitted automated routing of long-distance phone calls, obviating the need for operators to assist in routing. Under the allocation system that developed to support this system, numbering resources are allocated to local telephone exchange carriers on the basis of physical geography, rather than on the basis of end-user demand for those numbers. That is, typically a large block of numbers is allocated to a carrier for use in a geographic area, even though there may not be end-users assigned to each individual number available in the area. This system worked smoothly so long as only one entity (the local exchange carrier) offered only one type of service (wireline telephony) to customers.

2. New services using the same numbering system, particularly cellular telephones, began to enter the telecommunications marketplace with increasing frequency beginning in the late 1980's. More recently, the Telecommunications Act of 1996 opened the market for competitive local wireline service, again giving rise to more players entering the market. In addition, many customers are obtaining additional telephone lines to support additional services such as Internet, data, and facsimile services. Because of the relatively recent explosion of market entry and customer demand for new services, as well as the assignment of telephone numbers to multiple service providers in large blocks on a geographic basis, we have witnessed an incredible increase in demand for numbering resources.

3. Although we are only just beginning to see the benefits of competition in the marketplace for local wireline telephone service, the coincident costs in the form of the rapid exhaust of area codes are already all too apparent. The effect on consumers having to undergo, in some cases, multiple area code changes in relatively short time frames is an unacceptable byproduct of burgeoning competition in the telecommunications marketplace. To illustrate the pace of area code exhaust, consider California, which, at the end of 1992, had thirteen area codes in use. The California Public Utilities Commission projects that by the end of 2002, it will have 41 area codes. When the task of splitting the 323 area code from the 213 area code in the Los Angeles area was completed in April 1999, rather than lasting for ten or even five years, the new area code was immediately declared to be in jeopardy of exhausting its numbering resources.

4. The goal of this proceeding is to address the underlying drivers of area code exhaust so that consumers are spared the enormous costs and inconveniences associated with the rapid pace of implementation of new area codes. In addition, clearly, implementing new area codes is not a solution that can continue indefinitely. As of the end of 1998, it was estimated that nearly one-third of the total number of geographic area codes assignable to the United States had been put into service. By some projections, the NANP could exhaust within ten years. Because the estimated cost of expanding the NANP is enormous, and the time to effect such an expansion is estimated to be on the order of ten years, the need to extend the life of the current NANP through effective conservation and efficient utilization of numbering resources is apparent and immediate.

5. This Commission, with input from industry groups, advisory bodies, state public utility commissions and the public, has already begun to examine various numbering conservation and optimization methods. Continuing in these efforts, we issue this Notice to seek public comment on how best to create national standards for numbering resource optimization. In doing so, we seek to: (1) minimize the negative impact on consumers; (2) ensure sufficient access to numbering resources for all service providers that need them to enter into or to compete in telecommunications markets; (3) avoid, or at least delay, exhaust of the NANP and the need to expand the NANP; (4) impose the least societal cost possible, in a competitively neutral manner, while obtaining the highest benefit; (5) ensure that no class of carrier or consumer is unduly favored or disfavored by our optimization efforts; and (6) minimize the incentives for carriers to build and carry excessively large inventories of numbers.

Executive Summary

6. In this Notice, we consider and seek comment on a variety of administrative and technical measures that would promote more efficient allocation and use of NANP resources. In Section III, we seek specific comment on the relative costs and benefits, both financial and societal, of implementing each measure. We also ask that commenters weigh the cost of extending the life of the current NANP through various numbering resource optimization strategies against the projected cost of expansion of the NANP.

7. In Section IV, we examine the existing mechanisms for the administration and allocation of numbering resources, which are governed by industry-developed CO Code Guidelines. We find that the guidelines have not been effective in constraining the ability of carriers to obtain and carry excessively large inventories of numbering resources for which they have no immediate need. We seek comment on whether the guidelines should be modified or replaced, wholly or in part, by enforceable federal rules. Within the section, we outline proposals for a uniform set of numbering status definitions. We also seek comment on measures that would tie the allocation of new numbering resources to a showing of need by the carrier, increase carrier accountability for number utilization through enhanced data reporting and audit requirements, and speed the return of unused numbering resources. We specifically seek comment on the possibility of requiring carriers to meet number utilization thresholds before they can obtain additional numbering resources. These measures would not require

implementation of new systems or technologies, and we believe that they could be implemented in a relatively short time period at minimal cost.

8. In Section V, we consider and seek comment on some specific numbering resource optimization solutions that could be implemented in addition to, or in combination with, stricter administrative standards for the administration and allocation of numbering resources. These methods include rate center consolidation, mandatory ten-digit dialing, and number pooling. We consider the likely costs and potential number optimization benefits of each of these solutions. We also seek comment on a host of issues related to the way in which number pooling might be implemented and administered, if we were to make carrier participation mandatory at some level.

9. In light of the potential costs of these numbering resource optimization solutions, we seek comment on whether the magnitude of the number exhaust problem justifies requiring carriers to participate in one or more of these solutions on a mandatory basis, either at the federal level or through delegation of authority to the states. In the alternative, we consider whether optimal use of numbering resources could be accomplished without the need for such mandates, provided that carriers achieved sufficiently high levels of efficiency in their usage of numbers. Under this approach, we would require carriers to meet specific number utilization thresholds, but would leave to each carrier the choice of what numbering optimization method or methods to use to achieve that threshold.

10. In Section VI, we consider whether establishing a pricing mechanism for numbering resources would improve the efficiency of number allocation and use. Although it is probably not feasible in the short-term to replace our existing numbering resource allocation mechanism with a market-based approach, we believe it is important to consider using market-based mechanisms to allocate numbers as a possible long-term alternative to regulatory mandates. We seek comment on whether moving to a market-based system of allocating numbering resources is feasible, and how the transition to such a system could be implemented.

11. In Section VII, we consider area code relief methodologies, including splits, overlays, and boundary realignments, as numbering optimization strategies. We recognize that our consideration of both short-term and long-term numbering resource optimization measures in this Notice does not eliminate the need for states to continue to implement area code relief in those area codes that are approaching depletion. We seek comment on what action the Commission can take to assist states in implementing area code relief in a manner that is consistent with the objectives of this proceeding.

Procedural Matters

A. Ex Parte Presentations

12. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.

B. Initial Regulatory Flexibility Act Analysis

13. The following is a summary of the Initial Regulatory Flexibility Analysis (IRFA) created for the Notice. Pursuant to the Regulatory Flexibility Act (RFA), See 5 U.S.C. section 603. The RFA, See 5 U.S.C. section 601 *et seq.*, was amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission has prepared the following IRFA of the possible significant economic impact on small entities of the policies and rules in this Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

14. *Need for and Objectives of the Proposed Rules.* The Commission is issuing this Notice to seek public comment on how best to create national standards for numbering resource optimization. In doing so, we seek to: (1) ensure sufficient access to numbering resources for all service providers that need them to enter into or to compete in telecommunications markets; (2) avoid, or at least delay, exhaust of the NANP and the need to expand the NANP; (3) minimize the negative impact on consumers; (4) impose the least cost possible, in a competitively neutral manner, while obtaining the highest benefit; (5) ensure that no class of carrier or consumer is unduly favored or disfavored by our numbering resource optimization efforts; and (6) minimize the incentives for building and carrying excessively large inventories of numbers.

15. *Legal Basis.* The proposed action is authorized under sections 1, 4(i) and (j), 201, 208, and 251 of the Communications Act of 1934, as amended. 47 U.S.C. sections 151, 154(i), 154(j), 201, and 251(e).

16. *Description and Estimate of the Number of Small Entities That May Be Affected by this Notice.* The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. section 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' Id. section 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Id. section 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. section 632). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. section 632.

17. In this IRFA, we consider the potential impact of this Notice on all users of telephone numbering resources. The small entities possibly affected by the proposed rules, if adopted, include wireline, wireless, and other entities, as described below. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4,812 (Radiotelephone Communications) and 4,813 (Telephone Communications, Except Radiotelephone) to be small entities having no more than 1,500 employees. 13 CFR section 121.201. In the FRFA to the *Universal Service Order,* we described and estimated in detail the number of small entities that would be affected by the new universal service rules. 12 FCC Rcd 8776, 9227–9243 (1997). Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such

entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by the SBA as ''small business concerns.'' *See* 13 CFR section 121.201, SIC code 4813. Since the time of the Local Competition decision, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

18. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator: Interstate Service Providers Report (Locator).* FCC, Carrier Locator: Interstate Service Providers at 1–2. This report lists 3,604 companies that provided interstate telecommunications service as of December 31, 1997 and was compiled using information from Telecommunications Relay Service (TRS) Fund Worksheets filed by carriers (Jan. 1999). These carriers include, *inter alia,* local exchange carriers, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

19. *Local Service Providers.* There are two principle providers of local telephone service; ILECS and competing local service providers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to data set forth in the *FCC Statistics of Communications Common Carriers (SOCC),* 34 ILECs have more than 1,500 employees. We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of ILECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,376 ILECs are small entities that may be affected by the proposed rules, if adopted.

20. *Competitive Local Service Providers.* This category includes competitive access providers (CAPs), competitive local exchange providers (CLECs), shared tenant service providers, local resellers, and other local service providers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Locator* data, 145 carriers reported that they were engaged in the provision of competitive local service. We estimate that there are fewer than 145 small entity competitive local service providers that may be affected by the proposed rules, if adopted.

21. *Providers of Toll Service.* The toll industry includes providers of interexchange services (IXCs), satellite service providers and other toll service providers, primarily resellers. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Locator data, 164 carriers reported that they were engaged in the provision of toll services. We estimate that there are fewer than 164 small entity toll providers that may be affected by the proposed rules, if adopted.

22. In addition, an alternative SBA standard may apply to satellite service providers. The applicable definition of small entity generally is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million. The Census report does not provide more precise data.

23. *Resellers.* This category includes toll resellers, operator service providers, pre-paid calling card providers, and other toll service providers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent Locator data, 405 carriers reported that they were engaged in the resale of telephone service. We estimate that there are fewer than 405 small entity resellers that may be affected by the proposed rules, if adopted.

24. *Wireless Telephony and Paging and Messaging.* Wireless telephony includes cellular, personal communications service (PCS) or specialized mobile radio (SMR) service providers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Locator* data, 732 carriers reported that they were engaged in the provision of wireless telephony and 137 companies reported that they were engaged in the provision of paging and messaging service. We estimate that fewer than 732 carriers are engaged in the provision of wireless telephony and fewer than 137 companies are engaged in the provision of paging and messaging service.

25. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

26. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Paul Kagan Associates, Inc., *Cable TV Investor,* Feb. 29, 1996 (based on figures for Dec. 30, 1995). 47 U.S.C. section 543(m)(2). 47 CFR section 76.1403(b). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

27. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer

than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

28. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Notice seeks comment on whether all NXX codeholders should be required to report the status of all telephone numbers within the NXX blocks assigned to them. In the alternative, the Notice seeks comment on whether utilization data reporting on a more aggregated basis (or some more aggregated set of telephone number status categories) would provide sufficient data to accurately track number utilization. The Notice proposes that any utilization reporting obligation that the Commission adopts would be in addition to the demand forecasting requirement that the COCUS currently places on carriers. The Notice seeks comment on whether any modifications should be made to improve the quality and accuracy of carriers' demand forecasts. Alternatively, the Notice seeks comment on several alternative data collection options, including the forecast and utilization reporting process in the current Thousand Block Pooling Guidelines, and the Line Number Use Survey (LINUS) data collection model designed by NANPA staff as a replacement for COCUS. The Notice also seeks comment on other industry proposals for a number utilization and forecasting mechanism to replace COCUS. Finally, it seeks comment on whether to supplement the need verification measures and data collection program with a comprehensive audit program that verifies carrier compliance with federal rules and industry numbering guidelines.

29. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The rules we propose in this Notice are designed to ensure sufficient access to numbering resources for all service providers that need them. The Notice seeks public comment on how best to create national standards for numbering resource optimization in order to: (1) ensure sufficient access to numbering resources for all service providers that need them to enter into or to compete in telecommunications markets; (2) avoid, or at least delay, exhaust of the NANP and the need to expand the NANP; (3) minimize the negative impact on consumers; (4) impose the least cost possible, in a competitively neutral manner, while obtaining the highest benefit; (5) ensure that no class of carrier or consumer is unduly favored or disfavored by our optimization efforts; and (6) minimize the incentives for carriers to build and carry excessively large inventories of numbers. We seek comment on our tentative conclusions and proposals, and on additional actions we might take in this regard to relieve burdens on users of telephone numbering resources.

30. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

C. Comment Filing Procedures

31. Interested parties may file comments on or before July 30, 1999 and reply comments on or before August 30, 1999. Parties must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Room TW–B204F, Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, CC Docket 99–200 or rulemaking number, RM No. 9258.

32. Written comments by the public on the proposed information collections are due by July 30, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 16, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

33. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15334 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 116

Thursday, June 17, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Delegation of Authority and Line of Succession

AGENCY: Agency for International Development, Office of Inspector General.

ACTION: Delegation of authority and line of succession.

SUMMARY: This document amends Delegation of Authority No. 14–01, FR Doc. 95–16531, dated June 29, 1995, by removing the Assistant Inspector General for Security from the line of succession to serve as Acting Inspector General. The Security Office was recently realigned out of the Office of Inspector General.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary C. Pleffner, (202) 712–0135.

This rule is hereby issued to effect a delegation of authority and provide a line of succession from the Inspector General as follows:

I. Pursuant to the authority vested in me by the Inspector General Act of 1978, as amended, in the event of death, disability, absence, resignation, or removal of the Inspector General, U.S. Agency of International Development, the officials designated below, in the order indicated, and in the absence of the specific designation of another official in writing by the Inspector General or the Acting Inspector General, are hereby authorized to and shall serve as Acting Inspector General and shall perform the duties and are delegated the full authority and power ascribed to the Inspector General by law and regulation as well as those authorities delegated to the Inspector General by the Administrator, U.S. Agency for International Development.

1. Deputy Inspector General.
2. Assistant Inspector General for Audit.
3. Assistant Inspector General for Investigations.

II. Anyone designated by the Inspector General as acting in one of the positions listed above remains in the line of succession; otherwise, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

IV. The authorities delegated herein may not be redelegated.

Dated: May 28, 1999.

Jeffrey Rush Jr.,

Inspector General.

[FR Doc. 99–15426 Filed 6–16–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; National Woodland Ownership Study

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to reinstate, with change, a previously approved information collection. This information will help the agency evaluate the availability and sustainability of timber resources on private forest lands. Forest Service personnel will collect information from owners of private forest lands.

DATES: Comments must be received in writing on or before August 16, 1999.

ADDRESSES: All comments should be addressed to Thomas Birch, Northeastern Research Station, 5 Radnor Corp. Cntr., Suite 200, Radnor, PA 19087 or email tbirch/ne__fia@fs.fed.us or FAX: 610–975–4200.

FOR FURTHER INFORMATION CONTACT: Thomas Birch, 610–975–4045.

SUPPLEMENTARY INFORMATION:

Background

The Forest and Range Renewable Resources Planning Act of 1974, the Forest and Range Land Renewable Resources Act of 1978, and the Agricultural Research, Extension, and Education Reform Act of 1998, section 253(c), require the Forest Service to collect information on the availability and sustainability of timber resources on private forest lands. Data gathered in this information collection will help the Forest Service evaluate the availability and sustainability of these lands and how well the agency disseminates information about its private forest land assistance programs. The agency will share this data with other government and university scientists, who will use the information to better understand private forest ownerships and the economics of timber production on private forest lands.

Where, in previous years, this information collection had focused on private Forest land parcels, land tenure, forest land owner demographics, and ownership objectives, the new focus will be to identify issues that owners of private forest lands believe to be of importance and to gain knowledge of how owners of private forest lands manage or plan to manage their forested lands. The revised questionnaire also will provide the agency with improved information at the State and local level of government.

Data gathered in this information collection is not available from other sources.

Description of Information Collection

The following describes the information collection to be reinstated with change:

Title: National Woodland Ownership Study.

OMB Number: 0596–0078.

Expiration Date of Approval: October 31, 1997.

Type of Request: Reinstatement, with change, of a previously approved information collection for which Office of Management and Budget approval has expired.

Abstract: The collected information will help the Forest Service evaluate the agency's private forest land programs. These programs focus on opportunities for sustainable management of private forests. Sustainable private forest lands are essential for public recreational use and timber production. There are almost 10 million private forest land ownerships in the United States.

To gain knowledge of issues of importance to owners of private forest lands and of demographic data about owners of private forest lands, as well

as to support additional State and local government statistical requirements, the agency has expanded the questionnaire to include questions, such as why trees were or were not harvested, practices used to reforest following harvest, and recreational use of the forest.

Respondents will be asked to answer questions that include how many acres of forest land they own; how many acres of forest land they bought or sold in the last 15 years; how many trees they harvested; the types of products that were produced from the trees that were harvested; the landowner's reforestation practices; if trees were not harvested, the reasons given for not harvesting; if landowners intend to harvest trees in the future; whether they have received any kind of forestry assistance and, if yes, the source of the assistance; if they have a written forest land management plan and, if yes, who prepared the plan; their reasons for owning the forest land; the benefits they expect to receive from owning the forest land; if they use the land used for personal recreational activities; if they allow the public to use the land for recreational purposes; how they receive information about State and Federal forest programs that focus on private forests; and the demographic information of the owners of private forest lands.

Forest Service Forest Inventory and Analysis Staff will mail questionnaires to owners of private forest lands, who will return the completed form to the agency. Forest Service personnel will follow up with face-to-face and telephone interviews.

Respondents will be individuals, business partnerships, corporations, trusts, and Native American corporations, tribes and Nations that own private forest lands.

Data gathered in this information collections is not available from other sources.

Estimate of Burden: 0.5 hours.

Type of Respondents: individuals that own forestland, partnerships, corporations, trusts, and Native American corporations, tribes, and Nations.

Estimated Number of Respondents: 12,292 per year.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,146 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clairity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 11, 1999.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 99–15411 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Timber Harvest, Reforestation, and Road Construction Near Trapper Creek, Moonlight Creek, Watkins Creek, Spring Creek, Rumbaugh Creek, Cherry Creek and West Denny Creek Drainages; Gallatin National Forest, Gallatin County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, and road construction in the vicinity of Trapper Creek, Moonlight Creek, Watkins Creek, Spring Creek, Rumbaugh Creek, Cherry Creek and West Denny Creek drainages (herein referred to as the West Lake Project), located in the South Madison Mountain range, Gallatin National Forest, Hebgen Lake Ranger District, Gallatin County, Montana. The West Lake project is one of several projects being proposed on the Gallatin National Forest to contribute timber volume to facilitate acquisition of approximately 54,000 acres of lands currently owned by Big Sky Lumber Company (BSL) located within the proclamation boundary of the Gallatin National Forest. These lands are checkerboard inholdings that originate as part of the construction grants given to the Northern Pacific Railway Company by the Federal Government in the late 1800's and early 1900's. In addition, this project will contribute toward providing a flow of wood products from National Forest lands.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides overall guidance for land management activities, including timber and road management, within the area. The proposed actions of timber harvest, reforestation, and road construction are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This EIS will tier to the Gallatin Forest Plan Final EIS (September, 1987).

DATES: Written comments and suggestions should be received on or before July 19, 1999.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Stan Benes, District Ranger, Hebgen Lake Ranger District, Gallatin National Forest, P.O. Box 520, West Yellowstone, Montana 59758.

FOR FURTHER INFORMATION CONTACT: Susan LaMont, EIS Team Leader, Hebgen Lake Ranger District, Gallatin National Forest, Phone (406) 646–7369.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed on approximately 1325 acres of forested land in the West Lake project area, which has been designated as suitable for timber management by the Gallatin Forest Plan. The timber harvest operations and general administration of National Forest lands will require constructing up to 2.3 miles of new roads.

The Gallatin Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The primary purpose of this project is to utilize available timber volume within the West Fork area as one of several federal exchange assets to be used to facilitate acquisition of approximately 54,000 acres of lands currently owned by BSL located within the proclamation boundary of the Gallatin National Forest. These lands are checkerboard inholdings that originate as part of the construction grants given to the Northern Pacific Railway Company by the Federal

Government in the late 1800's and early 1900's.

Another purpose for the BSL/West Lake Timber Sale proposal is to contribute toward providing a flow of wood products from National Forest lands identified as ''suitable'' for timber production, as directed in the Gallatin Forest Plan (Forest Plan, pg. II–1). The forested areas being considered for harvest are identified as productive Forest lands available for timber harvest provided grizzly bear habitat objectives are met. The purpose of road construction is to access stands of timber to be harvested. All new roads will be effectively closed to vehicle travel after completion of post-sale activities.

The purpose of closing roads is to minimize future road maintenance costs, reduce sedimentation, and to regulate overall open road density to maintain or improve big game habitat security.

The project area consists of approximately 1325 acres of National Forest land located in T11S, R3E, Sec 26, 35, and 36; T12S, R3E, Sec 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36; T12S, R4E, Sec 18, 19, 20, 29, 30, 31, 32, and 33; and T13S, R4E, Sec 4, 5, 6, 7, 8, 9, 16, 17, 18, and 20; P.M. MT.

The areas of proposed timber harvest and reforestation would occur within Management Area 5 and 13. Timber harvest would occur only on suitable timber land. Road construction would occur in these management areas plus Management Area 7 when crossing streams. Below is a brief description of the applicable management direction.

Management Area 5—This management area contains travel corridors that receive heavy recreation use. Timber harvest is allowed within this area provided that the following goals are met. Management goals for MA 5 include: (1) maintain and improve wildlife habitat values; and (2) maintain the natural attractiveness of these areas to provide opportunities for public enjoyment and safety.

Management Area 13—This management area consists of forested, occupied grizzly bear habitat. The productive Forest lands area available for timber harvest provided grizzly bear habitat objectives are met. Management goals for MA 13 include: (1) managing vegetation to provide habitat necessary to recover the grizzly bear; (2) meet grizzly bear mortality reduction goals as established by the Interagency Grizzly Bear Committee; (3) allow a level of timber harvest compatible with Goal 1; and (4) meet State water quality standards and maintain stream channel stability.

Management Area 7—These are riparian zones or areas where vegetation is present that requires either free or unbounded water or soil moistures in excess of what is normally found in the area. Lands within this management area are suitable for timber harvest as long as soil, water, vegetation, fish, and dependent wildlife species are protected. These suitable lands must also be adjacent to other management areas suitable for timber management.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities in response to issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered, including the effects caused by recent and past harvesting and road construction on private lands. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur during June 1999. In addition to this initial scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

The following principle issues have been identified so far:

1. The potential effect of proposed timber harvest and associated road development on grizzly bear habitat (primarily security and cover).
2. The potential of proposed timber harvest and associated road development activities to displace grizzly bears use within the sale area.
3. The potential for proposed harvest and associated road development to affect water quality and stream conditions.

Other issues commonly associated with timber harvesting and road construction include: effects on native fisheries, old growth habitat, big game species, sensitive wildlife and plant species, cultural resources, soils, noxious weeds, and scenery in the area. This list will be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October of 1999. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the West Lake project area participate at that time. The Final EIS is scheduled to be completed by mid-January, 2000.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives. To

assist the Forest Service in identifying and considering issues, comments should be as specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: June 7, 1999.

David P. Garber,

Forest Supervisor.

[FR Doc. 99–15423 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee (PAC) will meet on July 7–9, 1999, in Weaverville, California. On Wednesday, July 7, the PAC will meet at the Weaverville Ranger District Office for a field trip from 9:00 A.M. to 5:00 P.M. Non-PAC members will need to arrange their own transportation. On Thursday, July 8, the meeting will be at the Weaverville Fire Hall, 100 Bremer, starting at 9:00 A.M. and adjourn at 5:00 P.M. On Friday, July 9, the meeting again will be at the Fire Hall and will start at 8:00 A.M. and adjourn at 12:30 P.M. Agenda items for the meeting include: (1) Review of the Elk Gulch II Field Trip; (2) Adaptive Management Area Panel Discussion; (3) Trinity River Water Issues Panel Discussion; (4) Subcommittee Reports; and (5) Public Comment Periods. All PAC meeting are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468 (voice), TDD 530–841–4573.

Dated: June 9, 1999.

Nancy J. Gibson,

Administrative Officer.

[FR Doc. 99–15425 Filed 6–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Census 2000 Evaluation of the Facility Questionnaire

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 16, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION: Requests for additional information or copies of the information collection instruments and instructions should be directed to Zakiya Sackor , Bureau of the Census, Mail Stop 9200, Washington, DC 20233; (301) 457–8084.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau must provide everyone in the United States and Outlying Areas the opportunity to be counted in Census 2000 as well as making sure that persons are counted in the appropriate places. The Census 2000 Special Place Facility Questionnaire (FQ) is a Computer Assisted Telephone Interview (CATI) operation in which updated information on group quarters (GQs) and housing units is collected and GQ codes are assigned; cases that cannot be resolved by CATI are sent to the field for personal visit (PV) interviews. The GQ code is a critical component to correctly tabulate the data for different types of GQs. This operation began in October 1998 and will conclude in July 1999.

To evaluate this operation, the Census Bureau is proposing to conduct a follow-up operation to the Census 2000 Special Place Facility Questionnaire. The types of information collected during the interviews will concern the types of services the facility provides, the number of persons that reside within the facility, and what types of GQs are associated with the facility. All information collected will be pertinent to verifying the accuracy of the GQ code.

A personal visit reinterview of 1,000 cases that were initially CATI or PV will be conducted. These 1,000 cases will consist of two strata, large and complex special places with a sample size of 750, (i.e. universities, hospitals) and others with a sample size of 250, (i.e. nursing homes). We will use these data to determine: (1) How well the facility questionnaire performed by assessing the frequency with which the group quarters classification code was different between the production interview and reinterview, (2) whether or not there was a significant difference in the occurrence of group quarters classification code change by special place type, and (3) whether or not CATI versus PV increased data quality by computing item nonresponse rates. The evaluation interviews will be conducted in six regions during January 2000.

II. Method of Collection

The reinterview will be conducted via personal visits administered by specially trained interviewers using a paper questionnaire that has been modified from the production questionnaire. The design of the reinterview questionnaire is based on the results of cognitive tests and research conducted prior to the Census 2000 Dress Rehearsal.

III. Data

OMB Number: Not available.
Form Number: Not available.
Type of Review: Regular Submission.
Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.
Estimated Number of Respondents: 1,000.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 250.
Estimated Total Annual Cost: There is no cost to the respondent other than the time to provide the information requested.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c)ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents; including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 14, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer

[FR Doc. 99–15467 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–832]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From Taiwan

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

SUMMARY: On May 28, 1999, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary determination of its antidumping duty investigation of dynamic random access memory semiconductors of one megabit and above (''DRAMs'') from Taiwan. This investigation covers four respondents: Etron Technology, Inc. (''Etron''), Nan Ya Technology Corporation (''Nanya''), Vanguard International Semiconductor Corp. (''Vanguard''), and Mosel-Vitelic, Inc (''MVI'').

On June 1, 1999, Vanguard submitted an allegation of ministerial errors with respect to the preliminary determination. Because these are ministerial errors which rise to the level of a ''significant error'' pursuant to 19 CFR 351.224(e) and (g), we are amending our preliminary determination.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner at (202) 482–3814 or Ronald Trentham at (202) 482–6320, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions as of January 1, 1995, the effective date of the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1998).

Significant Ministerial Error

We are amending the preliminary determination of sales at less than fair value for DRAMs from Taiwan to reflect the correction of a significant ministerial error made in the margin calculation regarding Vanguard in that determination, pursuant to 19 CFR 351.224(g)(1) and (g)(2). A significant ministerial error is defined as a correction which, singly or in combination with other errors, would result in (1) a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or de minimis and a weighted-average dumping margin of greater than de minimis or vice versa. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of Investigation

The products covered by this investigation are DRAMs of one megabit or above from Taiwan, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers fabricated in Taiwan, but packaged or assembled into finished semiconductors in a third country, are included in the scope. Wafers fabricated in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (''SIPs''), single in-line memory modules (''SIMMs''), dual in-line memory modules (''DIMMs''), memory cards or other collections of DRAMs whether mounted or unmounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items that alter the function of the module to something other than memory, such as video graphics adapter (''VGA'') boards and cards, are not included in the scope. Modules containing DRAMs made from wafers fabricated in Taiwan, but either assembled or packaged into finished semiconductors in a third country, are also included in the scope.

The scope includes, but is not limited to, video RAM (''VRAM''), Windows RAM (''WRAM''), synchronous graphics RAM (''SGRAM''), as well as various types of DRAMs, including fast page-mode (''FPM''), extended data-out (''EDO''), burst extended data-out (''BEDO''), synchronous dynamic RAM (''SDRAMs''), and ''Rambus'' DRAMs (''RDRAMs''). The scope of this investigation also includes any future density, packaging or assembling of DRAMs. The scope of this investigation does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this investigation are currently classifiable under subheadings 8542.13.80.05 and 8542.13.80.24 through 8542.13.80.34 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Also included in the scope are Taiwanese DRAMs modules, described above, entered into the United States under subheading 8473.30.10 through 8473.30.90 of the HTSUS or possibly other HTSUS numbers. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Ministerial Error Allegations

On June 1, 1999, Vanguard submitted a timely allegation that the Department made ministerial errors which resulted in a miscalculation of the weighted-average constructed export prices (''CEPs'') for Vanguard sales and a mistake in the total number of megabits that should be used in establishing the per-megabit cash deposit rate for Vanguard's DRAMs contained in mixed memory modules. See Memorandum on Application of a Per Megabit Cash Deposit Rate on Memory Modules, dated May 21, 1999.

We agree with Vanguard that the Department inadvertently miscalculated the weighted-average CEPs for Vanguard and miscalculated the total number of megabits that should be used in establishing the per-megabit cash deposit for Vanguard. *See* Clerical Error Memorandum, dated June 10, 1999. Because the effect of these ministerial errors on Vanguard's margins is significant, as defined in 19 CFR 351.224(g)(1), we are amending our

preliminary determination for this company. For a detailed analysis of this issue, *see* Clerical Error Memorandum, dated June 10, 1999. Because Vanguard's *ad valorem* and per megabit margins were used to compute the *ad valorem* and per megabit ''all others'' rates, we are also amending these duty deposit rates as well.

Amended Preliminary Determination

As a result of our correction of ministerial errors, we have determined that the following amended weighted-average dumping margins and weighted-average per megabit rates apply.

Exporter/manufacturer	Weighted-average margin (percent)	Weighted-average per megabit rate
Etron Technology, Inc	4.96	$0.03
Mosel-Vitelic, Inc	30.89	0.11
Nan Ya Technology Corporation	9.03	0.01
Vanguard International Semiconductor Corp	9.56	0.01
All Others	16.41	0.03

International Trade Commission (ITC)

In accordance with section 733(f) of the Act, we have notified the ITC of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

As stated in the Department's preliminary determination in this investigation (64 FR 28983), case briefs in at least ten copies must be filed no later than July 19, 1999, and rebuttal briefs no later than July 26, 1999. A list of authorities used and an executive summary of issues must accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 27, 1999, with the time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time and place of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within thirty days of the publication of the preliminary determination. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We intend to issue our final determination no later than October 10, 1999.

This amended preliminary determination is issued and published in accordance with section 703(d)(2) of the Act and 19 CFR 351.224.

Dated: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–15444 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Final Results of Expedited Sunset Review: Petroleum Wax Candles 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: Petroleum wax candles 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 petroleum wax candles 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, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 17, 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 certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: Tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.[1] This product is currently classified under Harmonized Tariff Schedule (HTS) item number

[1] There have been numerous clarifications to the scope of this order. For a complete listing of these clarifications, *see* Appendix A.

3406.00.00. The HTS item number is provided for convenience and U.S. Customs purposes. The written product description remains dispositive.

This review covers imports from all manufacturers and exporters of petroleum wax candles from the People's Republic of China.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping order on petroleum wax candles from the People's Republic of China (63 FR 66527), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the National Candle Association (''NCA'') on January 15, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations.* The NCA claimed interested party status under section 771(9) of the Act.[2] The NCA stated that it is a trade association comprised of 40 domestic producers of the subject merchandise. In addition, the NCA noted that it was the petitioner in the original investigation. We received a complete substantive response from the NCA on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 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 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, the NCA'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 considering guidance on likelihood 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 § 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

The antidumping duty order on petroleum wax candles from People's Republic of China was published in the **Federal Register** on August 28, 1986 (51 FR 30686). The Department has conducted one administrative review of this order.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, the NCA argues that revocation of the order against candles from the People's Republic of China would likely result in the continuation of dumping (*see* February 3, 1999 Substantive Response of the NCA at 10). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, the NCA states that the dumping margin has remained at 54.21 percent for all exports of the subject merchandise during the entire life of the order (*see* February 3, 1999 Substantive Response of the NCA at 11). Further, with respect to whether imports of the subject merchandise ceased after the issuance of the order, the NCA states that, following the imposition of the order, imports of the candles from the People's Republic of China decreased dramatically and remained relatively low for several years. The NCA argues, however, that there has been an increase in the imports of non-subject candles from the People's Republic of China in recent years. They believe the exclusion of certain types of candles from the order, through means of scope clarifications, has permitted an increase in the imports of candles that can enter the United States without restriction (*see* February 3, 1999 Substantive Response of the NCA at 11).

In conclusion, the domestic interested parties argued that the Department should determine that there is a likelihood that dumping continue if the order were to be revoked because (1) dumping margins have existed for all known exporters of the subject merchandise during the entire life of the order and (2) shipments of subject merchandise decreased significantly following the imposition of the order and have not regained their pre-order levels.

In making its decision, the Department considered the existence of dumping margins and the volume of imports before and after the issuance of the order. 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. In the instant proceeding, a dumping margin of 54.21 percent has existed throughout the life of the order for shipments of the subject merchandise from all Chinese producers/exporters.[4]

[2] In its substantive response of February 3, 1999, the NCA claimed interested party status under section 771(9)(E) of the Act, as a trade association, a majority of whose members manufacture candles in the United States.

[3] *See Petroleum Wax Candles from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 53 FR 47742 (November 25, 1988).

[4] The Department established a dumping margin of 54.21 percent for all producers, manufacturers, and exporters of the subject merchandise in the original investigation of this case (*see Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair*

Consistent with section 752(c) of the Act, the Department also considered the volume of imports of the subject merchandise before and after issuance of the order. The statistics on imports of petroleum wax candles between 1983 and 1998, provided by the domestic interested parties and confirmed by U.S. Census Bureau IM146 reports, indicate that annual imports of candles from the People's Republic of China covered under the HTSUS item number decreased sharply the year the order was created but, in recent years, have again increased and even surpassed the levels attained prior to the imposition of the order. The NCA argues that a substantial portion of the increase in import volumes of merchandise covered by the HTSUS item number may be attributed to merchandise determined by the Department to be excluded from the scope of the order and is, therefore, not relevant to this sunset determination.[5] Nonetheless, the Department can confirm, through an examination of U.S. Census Bureau IM146 Reports, that imports of subject merchandise continue in substantial quantities.

We find that the existence of a deposit rate above a *de minimis* level coupled with the continued exportation of subject merchandise is highly probative of the likelihood of continuation or recurrence of dumping. The SAA at 890, and the House Report at 63–64, state that the ''(e)xistence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.'' A dumping margin continues in effect for exports of the subject merchandise by all known PRC exporters. Therefore, given that dumping has continued over the life of the order and 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, consistent with Section II.A.3 of the *Sunset Policy Bulletin,* dumping is likely to continue if the order were revoked.

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 final determination of sales at less than fair value, published a weighted-average dumping margin for all producers, manufacturers, and exporters of petroleum wax candles from the People's Republic of China (51 FR 25085, July 10, 1986). The Department has not issued any duty absorption findings in this case.

In its substantive response, the NCA states that the dumping margin established in the original investigation is at least as high as the margin likely to prevail if the order were revoked. The NCA, echoing the guidance provided by the *Sunset Policy Bulletin,* argues that this margin best reflects the behavior of the PRC exporters absent the constraints of an antidumping order (*see* February 3, 1999 Substantive Response of the NCA at 12).

The Department agrees with the NCA's argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided by U.S. Census Bureau IM146 Reports, confirms that dumping margins have existed throughout the life of the order and that imports of the subject merchandise continue.

The Department finds the margin from the original investigation is the only calculated rate that reflects the behavior of producers and exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin,* we determine that the margin calculated in the Department's original investigation is probative of the behavior of PRC producers and exporters of petroleum wax candles if the order were revoked. We will report to the Commission the country-wide rate from the original investigation 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 order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
All Chinese Manufacturers/Exporters	54.21

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: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix A

The following is a list of scope clarifications issued by the Department, the date of the determination, and the party who requested the clarification.

Please note that scope requests received after July 1, 1997 have been analyzed pursuant to the Department's revised scope regulations (19 CFR part 351).

Date	Interested party	Department's determination
6 Jan 99	Meijer	Wax-filled container (rabbit-shaped) within scope.

Value, 51 FR 25085 (July 19, 1986)). In the antidumping duty order, the Department published an ''all others'' rate of 54.21 percent as well as a 54.21 percent rate for China National Native Produce and Animal By-Product Import & Export Corp. (*see Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China,* 51 FR 30686 (August 28, 1986)). In the only administrative review of this order, the Department also published an ''all others'' rate of 54.21 percent as well as 54.21 percent rate for P&C Enterprises (Hong Kong) (*see Petroleum Wax Candles from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 53 FR 47742 (November 25, 1988)).

[5] *See* Appendix A for a list of scope determinations made in this case.

Date	Interested party	Department's determination
24 Dec 98	Endar	''Floating'' candle within scope.
18 Dec 98	Boston Warehouse	Citronella outdoor candle not within scope.
18 Dec 98	Ocean State Jobbers	80% beeswax, 20% petroleum wax candles not within scope.
15 Dec 98	Target Stores	Citronella outdoor candles not within scope.
11 Dec 98	Et Al. Imports	80% beeswax, 20% petroleum wax candles not within scope.
10 Dec 98	Costco Wholesale	81% beeswax, 19% petroleum wax candles not within scope.
31 Aug 98	Leader Light	Parffin/palm oil in stearic acid shell in scope wax-filled container.
24 Aug 98	Kohl's	Various; gold rope, angel, and vine decorated in scope; star and tree w.f. containers in scope; container with Xmas scene outside scope.
2 Jul 98	Et Al. Imports	Bamboo-shaped candle outside scope.
11 Jul 98	Meijer, Inc	Various candles and w.f. containers (see scope ruling);
11 Jun 98	Meijer, Inc	Sweetheart tapers and wax-filled glass containers with decorative hearts are within the scope of the order. A wax-filled porcelain bunny, and Easter taper with a chick attached, an Easter bunny head teal light, a Valentine heart teal light, a heart-shaped candle on a heart base, a ''candy kiss'' candle, and a ''bunny long ears'' flame are outside the scope of the order.
6 May 98	Polardreams Inc	Granular petroleum wax candle kits are within the scope of the order.
16 Mar 98	American Drug Stores	Spherical ''wax veneer'' candle outside scope.
15 Dec 97	Meijer, Inc	Gold/green rectangle ''Noel'' outside scope, gold/green rectangle ''Joy'', ''Peace'' candles in scope; flame candle in scope; wax-filled Valentines candle mug outside scope.
Filed Incorrectly	Fimax, Inc	Decorated spherical candles; received 3 Sep 97; contacted about correcting deficiencies but no reply.
25 Sep 97	Russ Berrie	Heart-shaped ''trinket box'' candle in scope;
8 Sep 97	Meijer, Inc	Four terra cotta containers in scope; jack-o'-lantern out;
2 Sep 97	Russ Berrie	Star-shaped ''confetti'' pillar is within scope.
15 Sep 97	Indio Products, Inc	Assorted tapers, columns and votives in scope.
25 Sep 97	M.G. Maher	Red spiral candles in scope;
9 Apr 97	Dollar Tree Stores	Holly taper is outside scope.
9 Apr 97	Hallmark Cards	Red/white candle packaged as peppermint candy is within scope.
9 Apr 97	Inst. Financing Services	Red/white candle packaged as peppermint candy is within scope.
Pending	Ocean State Jobbers	80/20 beeswax/petroleum wax tapers and votives; received 3 Sep 96; no deadline.
Withdrawn	Sun-It Corp	Citronella tapers; received 27 Jun 96; no deadline.
Terminated	Cost Plus	Beeswax/petroleum wax tapers; request withdrawn by Cost Plus.
9 Dec 96	Mervyn's	Cube candle with sun face is within scope.
30 Oct 96	Midwest of Cannon Falls	Certain pillars, Easter taper are in; asparagus stalk is outside scope; Cube, oblong within scope.
30 Oct 96	Enesco Corp	Holiday candles, disc-shaped candle are outside scope; Cube, birthday within scope.
28 Oct 96	Russ Berrie Co., Inc	Heart-shaped terra cotta container is within scope.
26 Aug 96	Delightful Dimensions	75/25 beeswax/petroleum wax tapers are within scope ''until otherwise notified by the Department.'' (USCS classification ruling).
Terminated	Kendal King Graphics	Holiday wax-filled tins; terminated 29 Aug 96 at Kendal's request.
25 Sep 96	*Springwater Confection vs. the United States*	Christmas feather candle is within scope, holly feather candle is outside scope (Slip Op. 96–160 CIT; remand of 14 Feb 95 ruling).
24 Jun 96	Morris Friedman & Co	Wax-filled bucket, wax-filled glass containers are within scope.
28 Sep 95	Concept Marketing	''Safe-2-Lite'' candle is outside scope because it is a utility candle.
16 May 95	Sun It Corporation	''Flag Lites,'' ''Porch Torch,'' ''Gigantic Fruit,'' Pumpkin candles are outside scope.
Terminated	Boomster Imports	Cube candle; terminated 6 Jul 95.
Terminated	Kmart Corporation	Holiday pillar candles; terminated 26 Jun 95.
14 Feb 95	Watkins Incorporated	Holiday pillar candle is outside scope.
14 Feb 95	Springwater Confection	''Feather'' spiral candles are within scope (remanded by CIT; *see* 13 May 96, above).
13 Jan 95	Two's Company	Taper with holiday figurine is outside scope; pillar candles with decorations are within scope.

Date	Interested party	Department's determination
16 Dec 94	Lew-Mark	Wax-filled ''pansy'' tins are within scope.
Terminated	Scentex, Inc	Candles containing potpourri; candles produced in Macau; terminated 7 Sep 94.
27 Jul 94	Star Merchandise Co. Inc	Certain citronella candles outside scope; candles in holiday tins outside scope; certain wax-filled containers are within scope.
27 Jul 94	Success Sales Co	Holiday pillar candles are outside scope.
27 Jul 94	West Coast Liquidators	Tapers with holiday figurines and candles molded as identifiable objects are outside scope.
6 Jun 94	Kole Imports	Tapers with holiday figurines are outside scope
6 Jun 94	A J Cohen Co.	Tapers with holiday figurines are outside scope.
30 Sep 93	Cherrydale Farms	Currier & Ives holiday tins are outside scope.
30 Sep 93	Hallmark Cards, Inc	''Party'' rounds are within scope; certain wedding candles are outside scope.
10 Jun 93	San Francisco Candle	Certain mushroom, oval/egg, and spherical candles are outside scope.
7 Jun 93	Primark	Certain wax-filled tins with Santa Claus designs are outside scope; other wax-filled tins within scope.
9 Apr 93	Trade Advisory Group	Certain terra cotta candles are within scope.
9 Apr 93	Garrett Hewitt, Int'l	''Giorgio'' candles are within scope.
12 Feb 93	Simcha Candle Co	''Household'' candles are outside scope; certain tealight candles are within.
17 Mar 92	Wolf D. Barth Co	Van Gogh ''sculpture'' and Monet spiral are within scope.
11 Dec 91	W.M. Stone & Co	Easter holiday tapers are outside scope (USCS ruling).
4 Nov 91	San Francisco Candle	Moonlite and Candylite candles are within scope.
3 Sep 91	Fabri-Centers, Inc	Certain citronella candles are outside scope.
2 Jul 90	Rite Aid Corp.	Certain holiday tapers are outside scope (USCS ruling).
20 Mar 89	U.S. Customs Service CIE N–212/85; Supp. 8	''Party'' candles (6⅝ by ⅛) are outside scope Ruling issued directly to USCS. in ltr to A R Beikirch, USCS, 8 Feb 89.
21 Sep 87	U.S. Customs Service CIE N–212/85; Supp. 6	Certain novelty candles w/scenes or symbols outside scope; numeral and ''identifiable object'' candles outside scope.
9 Sep 87	West Coast Liquidators	Certain holiday pillars and tapers are outside scope (USCS ruling).
23 Aug 87	Carmichael International	Certain novelty candles are outside scope.
23 Jul 87	Empire Candle Co	Candles with metal-cored wicks are within scope.
13 Jul 87	Giftco, Inc	Candles w/raised holiday motifs are outside scope (*see* CIE N–212/85, Supp. 6, 21 Sep 87).
30 Oct 86	Global Marketing Services	Certain tapers with permanently attached figurines are outside scope.

[FR Doc. 99–15445 Filed 6–16–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Antidumping Duty Administrative Review; Time Limit

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

ACTION: Notice of extension of time limit for final results of review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on roller chain, other than bicycle from Japan. The review covers ten manufacturer/exporters of the subject merchandise to the United States for the period April 1, 1997, through March 31, 1998.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Dulberger or Wendy Frankel, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5505, or (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month for the preliminary results, 120 days after the date on which the preliminary results are published for the final results), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the final results until November 8, 1999. *See* the Memorandum from Bernard Carreau to Robert S. LaRussa, dated June 4, 1999, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building.

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

Dated: June 8, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–15446 Filed 6–16–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural

Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–011. *Applicant:* University of Wisconsin-Madison, 750 University Avenue, Madison, WI 53706. *Instrument:* Micromanipulator, Model MK1. *Manufacturer:* Singer, United Kingdom. *Intended Use:* The instrument is intended to be used for studies of RNA and protein, in microinjected Xenopus Oocytes. The objectives of the investigations are to: (a) Study the mechanisms by which tRNAs are exported and to determine what features of tRNAs are necessary and sufficient for their export; (b) study the mechanisms by which constitutive transport element (CTE) or MPMV is able to promote the release of completely spliced pre-mRNAs from spliceosomes and to relate export of that element to the process of normal mRNA export; and (c) study the structure of a small RNA export element and determine what factors lead to its export or retention. Application accepted by Commissioner of Customs: June 2, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–15447 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Palestinian Business Advisory Group: Membership

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of membership opportunity.

SUMMARY: In February 1999, the U.S.-Palestinian Bilateral Committee agreed to establish the United States-Palestinian Business Advisory Group. This notice announces membership opportunities for American business representatives on the U.S. side of the Group.

DATES: In order to receive full consideration, requests must be received on or before July 19, 1999.

ADDRESSES: Please send your requests for consideration to Paul Thanos, Desk Officer, Office of the Near East, U.S. Department of Commerce, either by fax at (202) 482–0878 or by mail to Room 2029B, U.S. Department of Commerce, 14th and Constitution, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Paul Thanos, Desk Officer, Office of the Near East, U.S. Department of Commerce, Room 2029B, 14th and Constitution Avenue, NW, Washington DC 20230, Phone 202–482–1857.

SUPPLEMENTARY INFORMATION: The U.S.-Palestinian Bilateral Committee agreed at its February 16, 1999 meeting to establish a private sector-led business advisory group to provide input to the subcommittee on Trade and Investment. This advisory group, to be named the United States-Palestinian Business Advisory Group (USPBAG)—will make recommendations that reflect private sector views, needs, and concerns regarding business development in the West Bank and Gaza and commercial ties between Americans and Palestinians. The USPBAG will advise the Trade and Investment Subcommittee on the following areas:

- Initiatives that can be taken to promote economic activity between American and Palestinian
- Palestinian commercial and investment laws
- Palestinian and U.S. trade policies
- Palestinian economic policies and their impact on the business climate

The USPBAG will be comprised of two sections, an American section and a Palestinian section. Each section will have ten members. Members will serve two year terms.

The members of each section will, to the extent possible, represent diverse commercial sectors. Priority sectors include: Agribusiness and food processing; banking communications; engineering and construction; information technology; insurance; manufacturing; power generation; restaurant and hospitality; tourism; and software, music, and video production. The State Department will appoint members in consultation with the Commerce Department.

Private sector members will serve in a representative capacity presenting the views and interests of their particular industry. Private sector members are not special government employees. U.S. members serve at the discretion of the Secretary of State. Members will not receive compensation for their participation in USPBAG activities. Members participating in USPBAG meetings and events will be responsible for their own travel, living, and other personal expenses.

In order to be eligible for membership in the U.S. section, a potential candidate must be:

- A U.S. citizen residing in the United States
- A holder of a significant position in a private sector company or non-profit organization that has a unique technical expertise and outstanding reputation
- Not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended

In reviewing eligible candidates, the Department of State and Department of Commerce will consider such selection factors as:

- Experience and interest in the West Bank and Gaza markets
- Industry or service sector represented
- Export/investment experience

To be considered for membership, please provide the following: name(s) and title(s) of the individual(s) requesting consideration; name and address of the company or organization sponsoring each individual; company's product, service, or technical expertise; size of the company; export trade, investment, or international program experience and major markets; and a brief statement of why the candidate(s) should be considered for membership in the USPBAG.

Dated: June 14, 1999.

Thomas R. Parker,

Director, Office of the Near East.

[FR Doc. 99–15450 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–25–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

June 11, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist,

Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60308, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 11, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 21, 1999, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
219	1,515,614 square meters.
226/313	2,591,737 square mters
317	41,809,984 square meters.
326	2,446,604 square meters.
334/634	263,062 dozen.
335/635/835	203,419 dozen.
338/339	763,959 dozen of which not more than 458,833 dozen shall be in Categories 338–S/339–S [2].
341/641	414,722 dozen.
342/642	329,472 dozen.
347/348	483,264 dozen of which not more than 255,636 dozen shall be in Categories 347–T/348–T [3].
351/651	202,404 dozen.
352	436,549 dozen.
369–S [4]	113,523 kilograms.
369–O [5]	790,793 kilograms.
638/639	308,877 dozen.
847	277,991 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–15465 Filed 6–16–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is meeting to conduct the final briefing of the Pacific Strategy Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy 21st Century strategy for the Pacific Rim.

DATES: The meeting will be held on June 30, 1999 from 11:00 a.m. to noon.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 26, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 99–15427 Filed 6–16–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.200]

Office of Postsecondary Education, Graduate Assistance in Areas of National Need Program; Notice of Technical Assistance Workshop for Fiscal Year (FY) 2000 Grant Applications

SUMMARY: The Secretary announces a technical assistance workshop to assist institutions of higher education in preparing grant applications for the Graduate Assistance in Areas of National Need (GAANN) Program for

the FY 2000 grant competition. For further information on the GAANN Program please refer to Title VII, Part A, Subpart 2 of the Higher Education Act of 1965, as amended, and 34 CFR Part 648. This information is also located at the Department of Education's website at: http://www.ed.gov/offices/OPE/HEP/iegps.

DATES: The technical assistance workshop will be held in the Denver metropolitan area from Sunday, July 18, 1999, through Tuesday, July 20, 1999.

ADDRESSES: The workshop will be held at the Doubletree Hotel, 13696 East Iliff Place, Aurora, Colorado.

FOR FURTHER INFORMATION CONTACT: Cosette Ryan, GAANN Program, 400 Maryland Avenue, SW, Portals Building, Suite 600, Washington, DC 20202–5247. Inquiries may be sent by e-mail to cosette__ryan@ed.gov or by Fax to (202) 205–9489. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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 workshop is free to the public. If you attend the workshop, you must pay your own travel and hotel accommodations.

The workshop agenda is as follows:

Registration: 9:00 a.m–3:00 p.m., Sunday, July 18, 1999
Orientation: 3:00 p.m.–5:00 p.m., Sunday, July 18, 1999
Workshop sessions: 9:00 a.m.–4:30 p.m., Monday, July 19, 1999
Workshop sessions: 9:00 a.m.–noon, Tuesday, July 20, 1999

To make reservations for either the workshop or hotel accommodations at the Doubletree Hotel, please contact Marta Quintana or Brien Dunlaney via the Internet at *marta@apimeetings.com* or *brien@apimeetings.com*. You may also reach them by telephone at (410) 884–9371 or by FAX at (410) 884–9374.

Assistance to Individuals with Disabilities at the Technical Assistance Workshop: The technical assistance workshop sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the workshop (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled workshop date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1135–1135ee.

Dated: June 14, 1999.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–15448 Filed 6–16–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 99–21; Department of Energy Experimental Program To Stimulate Competitive Research (DOE/EPSCoR)

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of science, engineering, and mathematics, announces its interest in receiving applications from eligible States for the support of the DOE/EPSCoR Program. The purpose of the DOE/EPSCoR Program is to enhance the capabilities of designated States to conduct nationally-competitive energy-related research and to develop science and engineering manpower in energy-related areas to meet current and future needs.

DATES: The deadline for receipt of formal applications is 4:30 p.m. E.S.T., December 1, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000.

ADDRESSES: Formal applications referencing Program Notice 99–21, must be submitted to U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–21. This address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this Notice and the DOE/EPSCoR program, contact the following individual: Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Office of Basic Energy Sciences, SC–132, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–3209, e-mail: (matesh.varma@science.doe.gov).

SUPPLEMENTARY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR) by the National Science Foundation (NSF), DOE has decided to again restrict eligibility to the following states and territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

An appropriate fiscal agent, acting on behalf of a state's EPSCoR Committee, may submit only one application in response to this program notice. It is the DOE/EPSCoR program policy to limit the Research Implementation awards to one active award per state. Therefore, only those EPSCoR states that have: (1) Not received a previous DOE/EPSCoR Research Implementation award, (2) ''graduated'' their previously supported Research Implementation award research clusters or (3) received final funding for their Research Implementation award in FY 1999, are eligible to apply for FY 2000 funding.

Awards issued under this Notice will provide funding for state program coordination, human resource development activities, and research, including a balanced portfolio of

student research activities spanning from K–12 to postgraduate students. The DOE/EPSCoR Research Implementation award should be used to improve the academic research infrastructure of key science and technology areas identified by the state's EPSCoR governing committee as critical to the development of state and institutional research and development capability. The state's strategy to develop and utilize the scientific and technological resources that reside in its research universities should be described in its DOE/EPSCoR Research Implementation award application. In preparation for submitting an application, the EPSCoR governing committee within each state is expected to have undertaken a comprehensive analysis of the strengths, weaknesses, and opportunities for development of its research institutions in support of overall state research and development objectives. Successful infrastructure improvement plans are likely to be those which are focussed on one or two energy-related research areas and which candidly represent the opportunities for enhanced academic R&D competitiveness, including the acquisition of sustained non-EPSCoR support. Most important, the state's infrastructure improvement strategy must have a high probability of realizing stated goals and objectives as judged by members of a DOE merit review panel. In all instances, performance milestones and a timetable for achieving such milestones are prerequisites for EPSCoR support. Priority will be given to applications that propose to develop new competitive research areas rather than those that propose to enhance or continue research areas that are already competitive. The DOE/EPSCoR Research Implementation awards are not an appropriate mechanisms to provide support for individual faculty science and technology research projects. Requests for support of such projects should be directed to the DOE's ongoing research grant programs.

Program Funding

Subject to Congressional authorization and approval of funds in FY 2000 DOE anticipates an estimated $3.0 million will be available for awards to fund collaborative research and manpower development in energy-related science and engineering disciplines. Approximately four awards are anticipated in FY 2000 at a maximum award level of $750,000 per year for a period of three years. Continuation funding for the awards will be contingent upon the availability of appropriated funds, progress of the research and continuing program need. Renewal applications beyond the initial three-year period will be considered for an additional two years, subject to continuing meritorious performance and progress in the previous award periods, as well as the value added of the proposed effort and the availability of funds.

As a tangible measure of an applicant's commitment to the objectives of the DOE/EPSCoR Program, cost-sharing on a minimum one-to-one ratio is a requirement of this program. Therefore, each application submitted requesting support from DOE under this Notice must provide, from non-Federal funds, an amount equal to or greater than the amount awarded by DOE; i.e., for every dollar provided by DOE, the recipient must provide a dollar or more from non-Federal sources for the project.

Applications

The DOE/EPSCoR Research Implementation awards are open to the entire range of energy-related disciplines supported by the Department of Energy. Additional information on the DOE Research Programs is available at the following web site addresses:

Department of Energy (General Information): *http://www.doe.gov*
Office of Science (formerly Energy Research): *http://www.er.doe.gov*
Basic Energy Sciences: *http://www.er.doe.gov/production/bes/bes.html*
Biological and Environmental Research: *http://www.er.doe.gov/production/ober/ober__top.html*
Computational and Technology Research: *http://www.er.doe.gov/octr/index.html*
Fusion Energy: *http://www.ofe.er.doe.gov*
High Energy and Nuclear Physics: *http://www.er.doe.gov/production/henp/henp.html*
Office of Defense Programs: *http://www.dp.doe.gov/Public/default.htm*
Office of Energy Efficiency and Renewable Energy: *http://www.eren.doe.gov*
Office of Fossil Energy: *http://www.fe.doe.gov*
Office of Environmental Management: *http://www.em.doe.gov*
Office of Civilian Radioactive Waste Management: *http://www.rw.doe.gov*
Office of Nuclear Energy: *http://www.ne.doe.gov*

Applications will be subjected to formal scientific merit review and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs.

Note: External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, and nonprofit organizations. All projects will be evaluated using the same criteria, regardless of the submitting institution.

General information about the development and submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: *http://www.er.doe.gov/production/grants/grants.html.*

Specific guidance for the preparation of the DOE/EPSCoR Research Implementation applications may be found in the ''Supplemental Information Guidelines'' at website: *http://www.er.doe.gov/production/bes/EPSCoR/APPLI.HTM.* Because of program specific information required and the overall complexity of the applications, the format and guidance included in the ''Supplemental Information Guidelines'' supercedes that of the general instructions for the preparation of an application to the Office of Science.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on June 8, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–15438 Filed 6–16–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–10–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 11, 1999.

Take notice that on June 8, 1999, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of July 1, 1999.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules SST and FSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15366 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–284–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

June 11, 1999.

Take notice that on June 8, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 92–A to be effective June 1, 1999.

Kern River states that the purpose of this filing is to comply with the Commission's May 28, 1999 letter order in this docket, which pertains to a new fuel reimbursement mechanism proposed by Kern River. In its letter order, the Commission accepted the tariff sheets tendered by Kern River, subject to Kern River filing revised tariff sheets to include a step-by-step description of how the fuel factors are calculated, including the allocation and classification of the fuel use and unaccounted-for natural gas as required by Sections 154.403(c)(5) and (c)(10) of the Commission's regulations.

Kern River requests any waivers necessary to allow Kern River to delay the implementation of its new reimbursement mechanism until August 1999 business.

Kern River states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15365 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–548–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

June 11, 1999.

Take notice that on June 7, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–548–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate certain interconnect facilities as a new delivery point (Cordova delivery point) to MidAmerican Energy Company (MidAmerican), all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Northern Border would construct and operate a 16-inch tee and valve and a single 10-inch ultrasonic meter and associated piping, valves, RTU, and buildings to serve as a delivery point to MidAmerican in Rock Island County, Illinois. Northern Border states that the estimated cost of the proposed facilities is $1.4 million.

Northern Border further states the volumes to be delivered at the proposed delivery point are volumes currently being transported by Northern Border. Northern Border will deliver to MidAmerican up to 94,800 Mcf on a peak day and an estimated 23 Bcf annually, it is stated. Northern Border further states that the natural gas volumes delivered at the Cordova delivery point will be used to serve a new power plant. Further, Northern states that there will not be any impact on the peak day capability of Northern Border's existing shippers as a result of the proposed interconnect, and any impact on annual deliveries will be de minimis.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor,

the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–15364 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC99–75–000 and ER99–3060–000]

Western Massachusetts Electric Company, Northeast Utilities Service Company, Consolidated Edison Energy, Inc., Consolidated Edison Energy, Massachusetts Inc.; Notice of Filing

June 11, 1999.

Take notice that on June 9, 1999, Western Massachusetts Electric Company (WMECO), Northeast Utilities Service Company Consolidated Edison Energy Massachusetts, Inc. (CEEMI) (collectively, Applicants) tendered for filing, under Section 205 of the Federal Power Act, schedules to the Interconnection and Operation Agreement that were inadvertently omitted from their May 25, 1999 filing pursuant to Sections 203 and 205 of the Federal Power Act for approvals and acceptances related to the sale of certain generating facilities by WMECO to CEEMI.

The Applicants state that copies of this filing have been sent to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

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 June 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15404 Filed 6–16–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–3]

Agency Information Collection Activities: Continuing Collection; Comment Request; General Hazardous Waste Facility Standards

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): General Hazardous Waste Facility Standards, EPA ICR #1571, OMB Control Number 2050–0120, expires November 30, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 16, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–FSIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, Virginia address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–1999–FSIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA, CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 401 M Street, SW, Washington DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page. This notice and the supporting documents that detail the General Hazardous Waste Facility Standards ICR are also available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by facsimile at (703) 308–8638, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or by e-mail at eberly.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Availability

Today's document and the supporting documents that detail the General Hazardous Waste Facility Standards ICR are available on the Internet. Follow these instructions to access this information electronically:

WWWURL: http://www.epa.gov/epaoswer/hazwaste/tsds/standards/index.htm
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet e-mail address
Path:/pub/epaoswer

Note: The official record for this action will be kept in paper form and maintained at the address in the ADDRESSES section above.

Affected entities: Entities potentially affected by this action are owners and operators of hazardous waste treatment, storage, and disposal facilities.

Title: General Hazardous Waste Facility Standards, EPA ICR #1571, OMB Control Number 2050–0120, expires on November 30, 1999.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency (EPA) develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections

3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in the Code of Federal Regulations (CFR) Title 40, parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of section 3004(a) of RCRA. 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 EPA would like to solicit comments 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 of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Burden Statement: This proposed ICR is an estimate of the total respondent burden for all activities related to general facility operating requirements, record keeping requirements, contingency plan and emergency reporting requirements, releases from solid waste management units, closure/post-closure requirements, financial requirements, corrective action management unit requirements, and conditions applicable to all permits.

The total burden to respondents as estimated in the proposed ICR for ''General Facility Standards (#1571)'' is 506,787 hours per year, at a cost of $26,703,873 per year. This estimate was based on owners and operators of hazardous waste management facilities complying with the information collection requirements set forth in 40 CFR parts 264 and 265, subparts B–H and by using an average hourly respondent labor cost (including overhead) of $90.00 for legal staff, $69.30 for managerial staff, $54.33 for technical staff, and $24.29 for clerical staff. EPA estimates the total number of respondents per year to be 2,607, which includes both permitted and interim status facilities. The estimate further differentiates facilities that are operating, that have closed, and that are in post-closure. The number of respondents varies depending upon the category of each facility and the required activity.

The respondent universe numbers in this proposed ICR are significantly lower than those estimated for the previously approved 1996 ICR. Some of this decrease is due to the ongoing consolidation and contraction of the hazardous waste treatment, storage, and disposal industry. In addition, EPA removed all federally owned or operated facilities from the respondent universe. Information collections addressed to federal government employees are not subject to the requirements of the Paperwork Reduction Act (PRA) of 1995. OMB's subsequent implementing regulations reiterate that information collections subject to the PRA do not include those addressed to federal government employees when acting within the scope of their employment. Therefore, this ICR should not account for the burden undertaken by federally owned or operated TSDFs in complying with the general facility standard record keeping and reporting requirements that apply to them. In the previously approved 1996 ICR, however, federal facilities were included in the universe of facilities counted as respondents to the general facility standard information collection requirements.

Most of the decrease, however, is due to more accurate RCRIS data. EPA spent considerable time and effort in order to review and validate the existing RCRIS data. In doing so, facilities that are no longer operating or that completed post-closure have been removed. The universe numbers used in this ICR are based on the current (as of March 31, 1999) GPRA workload universe in the Permitting and Post-Closure Program Accomplishment Reports and the FY 1999 Beginning of Year Plan (BYP).

Because of these revisions, the total bottom-line burden to respondents has decreased considerably over the previously approved 1996 ICR. Whereas the previous ICR estimated a total annual respondent burden of 1,927,553 hours, this ICR estimates a total annual bottom-line respondent burden of 506,787 hours. EPA believes that this burden reflects a more accurate portrait of the existing burden on the regulated community.

The annual public reporting burden and record keepingburden for this collection of information is estimated to average 308 hours per respondent.

For general facility operating standards, there is no associated reporting. The recordkeeping burden for general facility operating standards is estimated to average 92 hours per respondent per year. This estimate includes time for reading the regulations, preparing and submitting notices, collecting and documenting waste analysis data, and developing a waste analysis plan, inspection schedule, personnel training schedule, and construction quality assurance plan.

For operating record requirements, the record keeping burden is estimated to average 137 hours per year. This burden includes time to collect and file information in the operating record. There is no associated reporting burden for these requirements.

For contingency plan and emergency procedure requirements, there is no associated reporting burden. The recordkeeping burden is estimated to average one hour per respondent per year.

For requirements covering releases from solid waste management units, the public reporting burden is estimated to average 3 hours per respondent per year. This estimate includes time to read the regulations and prepare and submit demonstrations. There is no associated recordkeeping burden for these requirements.

For closure and post-closure requirements, the public reporting burden is estimated to average 45 hours per respondent per year. This estimate includes time to read the regulations; prepare and submit plans, notices, demonstrations, certifications, and records; and make modifications to plans. The recordkeeping burden is

estimated to average one hour per respondent per year.

For financial requirements, the public reporting burden is estimated to average 17 hours per respondent per year. This estimate includes time to read the regulations and prepare and submit financial and liability assurance documentation. There is no associated recordkeeping burden for these requirements.

For permit condition requirements, the public reporting burden is estimated to average 13 hours per respondent per year. This estimate includes time to read the regulations, and prepare and submit information requested by EPA, required by the permit, or required as a result of an incident that occurs at the facility. There is no associated recordkeeping burden for these requirements.

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.

Dated: June 9, 1999.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–15433 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–1]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of availability of the proposed final project XL agreement for the Atlantic Steel Redevelopment.

SUMMARY: EPA is requesting comments on a proposed Final Project XL Agreement for the Atlantic Steel XL Project. The Final Project Agreement is a voluntary agreement developed collaboratively by Atlantis 16th, L.L.C., stakeholders, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that the alternative strategy will produce greater environmental benefits. EPA has set a goal of implementing a total of fifty XL projects undertaken in full partnership with the states.

DATES: The period for submission of comments ends on July 19, 1999.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Michelle Glenn, U.S. EPA, Region IV, 61 Forsyth Street, Atlanta, GA 30303, or Tim Torma, U.S. EPA, Office of Reinvention (1802), 401 M Street, SW, Room 1025WT, Washington, DC 20460. Comments may also be faxed to Ms. Glenn at (404) 562–8628 or Mr. Torma at (202) 401–6637. Comments will also be received via electronic mail sent to: glenn.michelle@epa.gov or torma.tim@epa.gov.

FOR FURTHER INFORMATION CONTACT: The proposed Final Project Agreement and related documents are available via the Internet at the following location: ''http://www.epa.gov/ProjectXL''. The Agreement and related documents may also be obtained by contacting: Michelle Glenn, U.S. EPA, Region IV, 61 Forsyth Street, Atlanta, GA 30303, or Tim Torma, U.S. EPA, Office of Reinvention (1802), 401 M Street, SW, Room 1025WT, Washington, DC 20460. In addition, public files on the Project are located at EPA's Region IV in Atlanta. Questions to EPA regarding the documents can be directed to Michelle Glenn at (404) 562–8674 or Tim Torma at (202) 260–5180. To be included on the Atlantic Steel Project XL mailing list to receive XL progress reports and other mailings from the project sponsor, contact: Brian Leary, CRB Realty Associates, P.O. Box 2246, Duluth, GA 30096. Mr. Leary can be reached by telephone at (770) 622–7797. For information on all other aspects of Project XL contact Christopher Knopes at the following address: Office of Reinvention (1802), United States Environmental Protection Agency, Room 1029, 401 M Street, SW, Washington, DC 20460. Additional information on Project XL, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at ''http://www.epa.gov/ProjectXL''.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA), with the cooperation of State and local authorities, has initiated Project XL to work with interested companies to develop innovative approaches for addressing environmental issues. Project XL encourages companies and communities to come forward with new approaches that have the potential to advance environmental goals more effectively and efficiently than have been achieved using traditional regulatory tools.

Atlantis 16th, L.L.C. (hereafter referred to as Jacoby), a developer in Atlanta, GA has proposed redevelopment of a 138-acre site currently owned by Atlantic Steel near Atlanta's central business district. The proposed development is a mix of residential and business uses. Project plans include a multi-modal (cars, pedestrians, bicycles, transit linkage) bridge that would cross and provide access ramps to I–75/85 as well as connecting the site to a nearby MARTA (the Metropolitan Atlanta Rapid Transit Authority) rapid rail mass transit station. Jacoby has worked intensively with representatives of EPA, the State of Georgia, the City of Atlanta, other local authorities, and public stakeholders to develop a site-specific Project XL Agreement that will allow implementation of the redevelopment.

What is the Final Project Agreement?

The Final Project Agreement spells out the intentions of Jacoby and EPA related to development and implementation of this project. Due to the complexity of the project and the numerous processes and analyses necessary to implement it, EPA and Jacoby adopted a two-phased approach to the Project XL Agreement. The Phase 1 Project Agreement was made available for public comment on February 24, 1999 and was signed by EPA and Jacoby on April 15, 1999. This Final Project XL Agreement supersedes the Phase 1 Agreement. The Final Agreement incorporates information and agreements from the Phase 1 Agreement to the extent they remain current and in effect. EPA and Jacoby do not anticipate making substantive changes to aspects of the project which were agreed upon in the Phase 1 Agreement. Commentors on the Final Project Agreement are encouraged to focus on new information which was not included in the Phase 1 Agreement.

Like all Project XL Agreements, the Final Project Agreement itself is not legally binding—legally enforceable commitments described in the Agreement will be contained in separate legal documents such as the State

Implementation Plan and approved Remediation Plan.

Why Is Project XL Necessary?

The project site currently suffers from poor accessibility due to the lack of a linkage to and across I–75/85 to midtown and to the existing MARTA transit system in Atlanta. Construction of an interchange and multi-modal bridge across I–75/85 at 17th Street would improve access to the site. The bridge would also serve as a vital linkage between the Atlantic Steel redevelopment and the MARTA Arts Center station. In addition, construction of the 17th Street bridge was one of the City of Atlanta's zoning requirements for the project.

Jacoby is participating in Project XL for the Atlantic Steel redevelopment because neither the 17th Street bridge nor the associated I–75/85 access ramps would be able to proceed without the regulatory flexibility being allowed by EPA under this Project. Atlanta is currently out of compliance with federal air quality conformity requirements because it has failed to demonstrate that its transportation activities will not exacerbate existing air quality problems or create new air quality problems in the region. The Clean Air Act (CAA) generally prohibits construction of new transportation projects that use federal funds or require federal approval in areas where compliance with conformity requirements has lapsed. However, projects which are approved as transportation control measures (TCMs) in a state's air quality plan can proceed—even during a conformity lapse. EPA approves state air quality plans, including TCMs contained in the plans.

What Flexibility Is EPA Granting?

The flexibility Jacoby is seeking through Project XL is to regard the entire brownfield redevelopment project, including the 17th Street bridge, as a TCM. The flexibility under Project XL is necessary because the redevelopment likely would not qualify as a TCM in the traditional sense. Under the Clean Air Act, a ''transportation control measure'' must actually be a measure—an activity undertaken, a transportation project built, a program implemented. There are two components to the flexibility.

(1) The first part of the flexibility is to consider the entire Atlantic Steel redevelopment to be a TCM. That is, EPA would view Atlantic Steel's location, transit linkage, site design, and other transportation elements (e.g., provisions for bicyclists; participation in a transportation management association) together as the TCM. Under the Clean Air Act, a project must demonstrate an air quality benefit to be considered a TCM. The Clean Air Act lists several types of projects that can be TCMs but its language does not limit TCMs to the measures listed.

(2) The second aspect of the flexibility sought under Project XL concerns use of an innovative approach to measuring the air quality benefit of the Atlantic Steel redevelopment. EPA will measure Atlantic Steel's air quality benefit relative to an equivalent amount of development at other likely sites in the region. This type of comparison is available only to this particular redevelopment through the Project XL process. The entire Atlantic Steel redevelopment would attract new automobile trips and result in new emissions. Therefore, redevelopment of the site when considered in isolation would not qualify as a TCM in the traditional sense. EPA believes, however, that the Atlanta region will continue to grow, and that redevelopment of the Atlantic Steel site will produce fewer air pollution emissions than an equivalent quantity of development at other likely sites in the region.

Why Is This Flexibility Appropriate?

EPA believes the flexibility described above is appropriate for this project because of the combination of unique elements of the site and the redevelopment listed below. In the absence of these elements, EPA would be unlikely to approve new transportation projects during a conformity lapse.

(1) The site is a brownfield. An accelerated clean-up of the site will occur if this XL Project is implemented. The clean-up and redevelopment of the former industrial site aligns with EPA's general efforts to encourage clean-up and reuse of urban brownfields. The likely alternative would be an underdeveloped, underused industrial parcel in the middle of midtown Atlanta.

(2) The site has a regionally central, urban location. Redeveloping this property will result in a shift of growth to midtown Atlanta from the outer reaches of the metropolitan area. Because of the site's central location, people taking trips to and from the site will be driving shorter average distances than those taking trips to and from a development on the edge of the city. Shorter driving distances will result in fewer emissions.

(3) The redevelopment plans include a linkage to MARTA. This linkage would make it possible for those who work at the site to commute without a car and would serve residents of Atlantic Steel as well as residents of surrounding neighborhoods. In addition, the transit link is valuable for those coming to the site for non-work purposes, such as dining, shopping, and entertainment.

(4) The redevelopment plan incorporates many ''smart growth'' site design principles. These principles include features which promote pedestrian and transit access rather than exclusive reliance on the car. The redevelopment will avoid creating areas that are abandoned and unsafe in the evening, hotels and offices will be within walking distance of shops and restaurants, shops that serve local needs will be within walking distance of both the Atlantic Steel site and the adjacent neighborhoods, and wide sidewalks will encourage walking and retail use. Jacoby has also responded to the adjacent neighborhood's request for public parks, designating public space to central locations rather than relegating it to the edge.

(5) The redevelopment incorporates many elements that could qualify as TCMs by themselves. In addition to the linkage to mass transit, the redevelopment will participate in a transportation management association (TMA). The TMA may participate with the City of Atlanta and Jacoby in monitoring the transportation performance of the redevelopment by collecting travel-related data annually.

With the exception of the site's accelerated clean-up, all of these elements will have an impact on transportation decisions of people who begin and/or end trips in the Atlantic Steel site. The combination of the site's location in a central urban area, connection to the existing transit system, design that promotes pedestrian access, participation in a TMA, and provision of bicycle and pedestrian conveniences are expected to work together to reduce growth in auto traffic in the Atlanta region. The redevelopment could demonstrate that the application of smart growth concepts can make a difference in travel patterns, even in Atlanta—where people drive more per capita than any other city in the country. Therefore, EPA intends to use regulatory flexibility under Project XL to approve the redevelopment and its associated transportation projects as a TCM.

Dated: May 28, 1999.

Lisa Lund,

Deputy Associate Administrator for Reinvention Programs, Office of Reinvention.

[FR Doc. 99–15437 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

June 9, 1999.

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

DATES: Written comments should be submitted on or before August 16, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

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

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0251.

Title: Section 74.833 Temporary authorizations.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6 low power auxiliary stations.

Estimated Time Per Response: 2 hours.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 12 hours.

Total Annual Cost: $0.

Needs and Uses: Section 74.833 requires that requests for special temporary authorization be made by informal applications for low power auxiliary station operations which cannot be conducted in accordance with Section 74.24 of the FCC's rules and for operations of a temporary nature. (Section 74.24 states that classes of broadcast auxiliary stations may be operated on a short-term basis under the authority conveyed by a Part 73 licensee without prior authorization from the FCC, subject to certain conditions.) The data is used by FCC staff to insure that the temporary operation of a low power auxiliary station will not cause interference to other existing stations and to assure compliance with current FCC rules and regulations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15332 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 9, 1999.

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

DATES: Written comments should be submitted on or before August 16, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

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

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0663.

Title: Section 21.934 Assignment or transfer of control of BTA authorization.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 50 hours.

Needs and Uses: Section 21.934 requires a Basic Trading Area (BTA) authorization holder to file a statement indicating that its authorization was obtained through competitive bidding. This filing will be required when seeking approval for a transfer of control or assignment of its authorization within three years of receiving the authorization through competitive bidding procedures. Along with this statement, this applicant must also file copies of documents containing information on the amount of consideration. The data is used by FCC staff to determine whether there has been unjust enrichment to the person selling the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15333 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

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

June 8, 1999

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

DATES: Written comments should be submitted on or before July 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

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

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0600.

Title: Ownership Report for Noncommercial Educational Station.

Form Number: FCC 175.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 11,000.

Estimate Time Per Response: 45 mins. (0.75 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 16,500 hours.

Total Annual Costs: $3,300,000.

Needs and Uses: The FCC Form 175 is required to be used by all parties interested in participating in an FCC auction. The data will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to participate in the auction.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15331 Filed 6–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the second meeting of the Technological Advisory Council (''Council''), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, September 22, 1999, at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Contact Stagg Newman at snewman@fcc.gov or 202–418–2478.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry.

The purpose of this second meeting will be to hear and discuss the progress of the three focus groups established by the Council to consider the issues the FCC presented to it at its April 30, 1999 meeting. These issues include: (1) The current state of the art for software defined radios, cognitive radios, and similar devices, future developments for these technologies, and ways that the availability of such technologies might affect the FCC's traditional approaches to spectrum management; and the current state of knowledge of electromagnetic noise levels and the effects of such noise on the reliability of existing and future communications systems; (2) the current technical trends in telecommunications services, changes that might decrease, rather than increase, the accessibility of telecommunications services by persons with disabilities and ways the FCC might best communicate to designers of emerging telecommunications network architectures, the requirements for accessibility; and (3) the telecommunications common carrier network interconnection scenarios that are likely to develop, including the technical aspects of cross network (i.e., end-to-end) interconnection, quality of service, network management, reliability, and operations issues, as well as the deployment of new technologies such as dense wave division multiplexing and high speed packet/cell switching. The Council may also consider such other issues as come before the Council at that time.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Stagg Newman, the Council's Designated Federal Officer, before the meeting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15330 Filed 6–16–99; 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 July 1, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Crawford Family Investments Limited Partnership, Frederick, Oklahoma; to acquire voting shares of First Southwest Corporation, Frederick, Oklahoma, and thereby indirectly acquire voting shares of First Southwest Bank, Frederick, Oklahoma.

Board of Governors of the Federal Reserve System, June 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15344 Filed 6–16–99; 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 July 12, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Firstar Corporation, Milwaukee, Wisconsin; to acquire Mercantile Bancorporation, Inc., St. Louis, Missouri, and thereby indirectly acquire Ameribanc, Inc., St. Louis, Missouri; Mercantile Bank Midwest, Des Moines, Iowa; Mercantile Bank National Association, St. Louis, Missouri; Mercantile Bank, Overland Park, Kansas; Mercantile Bank of Trenton, Trenton, Missouri; Mercantile Bank, Paducah, Kentucky; Mercantile Bank of Illinois, Springfield, Illinois; and Mercantile Bank of Arkansas, National Association, North Little Rock, Arkansas.

In connection with this application, Applicant also has applied to acquire FFG Trust, Inc., Springfield, Illinois, and Mercantile Trust Company National Association, St. Louis, Missouri, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; D.D. Development of Sterling, Sterling, Illinois, and thereby engage in community development financing and investment activities, pursuant to § 225.28(b)(12)(i) of Regulation Y; Mercantile Consumer Loan Company, Rock Island, Illinois, and thereby engage in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

2. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire up to 9.9 percent of the voting shares of Firstar Corporation, Milwaukee, Wisconsin, and thereby indirectly acquire Firstar Bank Milwaukee, National Association, Milwaukee, Wisconsin; Firstar Bank USA, National Association, Waukegan, Illinois; Firstar Metro Bank & Trust Company, Phoenix, Arizona; Firstar Bank Burlington, National Association, Burlington, Iowa; Firstar Bank, National Association, Cincinnati, Ohio; Firstar Bank Wisconsin, Madison, Wisconsin; Firstar Bank of Minnesota, National Association, Saint Paul, Minnesota; and Firstar Bank Wausau, National Association, Wausau, Wisconsin.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. United Financial Corp., Great Falls, Montana; to acquire an additional 11.3 percent, for a total of 36.3 percent, of the voting shares of Valley Bancorp, Phoenix, Arizona, and thereby indirectly acquire additional voting shares of Valley Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, June 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15345 Filed 6–16–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/26/1999			
19990760	B.F. Goodrich Company, (The)	Coltec Industries Inc	Coltec Industries Inc.

Trans #	Acquiring	Acquired	Entities
19992111	Northside Operating Co	Doctors Community Healthcare Corporation.	Doctors Community Healthcare Corporation.
19992112	ONEOK, Inc	Koch Industries, Inc	Koch Oklahoma Midstream Processing Company, LLC, Koch Oklahoma Midstream Services Company, Koch Oklahoma Midstream Transmission Company, LLC.
19992163	Utilicorp United, Inc	Western Gas Resources, Inc	Western Gas Resources Storage, Inc.
19992173	Steelcase Inc	Lee Pierce	Lee Pierce Holdings, Inc.
19992176	GS Capital Partners II, L.P	H. Peter Claussen and Linda C. Claussen.	Gulf & Ohio Railways, Inc., The Seven Islands Foundation, Inc.
19992199	Kellstrom Industries, Inc	R. Dean Stickler	Certified Aircraft Parts, Inc.
19992200	Kellstrom Industries, Inc	Donald Marshall	Certified Aircraft Parts, Inc.
19992221	BellSouth Corporation	Champion International Corporation	Champion International Corporation.
19992247	J.W. Childs Equity Partners, L.P	Quality Future, Inc	Quality Stores, Inc.
19992248	Quality Future, Inc	J.W. Childs Equity Partners, L.P	CT Holding, Inc.
19992273	Quilvest American Equity Ltd	ATSCO Products, Inc	ATSCO Products, Inc
19992300	Weatherford International, Inc	Clearwater Holdings, Inc	ECD/Northwest, Inc.
19992301	Interim Services Inc	Norrell Corporation	Norrell Corporation.
19992302	Guy W. Millner	Interim Services Inc	Interim Services, Inc.
19992319	The Hain Food Groups, Inc	Frontenac VI Limited Partnership	Natural Nutrition Group, Inc.
19992323	The Atlantic Foundation	Brio Technology, Inc	Brio Technology, Inc.
19992324	Alistar Pilot Fund, LLC	William P. Johnson	Goshen Rubber Companies, Inc.
19992326	mobile mini, inc	The 1997 Jansons Trust	National Security Containers, L.L.C.
19992330	American Agricultural Insurance	Nationwide Mutual Insurance Company	Nationwide Mutual Insurance Company.
19992332	Waccamaw Corporation	HomePlace of America, Inc. (debtor in possession).	HomePlace of America, Inc. (debtor in possession).
19992334	EFTC Corporation	Honeywell Inc	Honeywell Inc.
19992335	James M. Galef	DLJ Merchant Banking Partner II, L.P	Insilco Corporation, Romac Metals Division.
19992338	Robert M. Beavers, Jr	Campbell Soup Company	Fresh Start Bakeries, Inc.
19992339	The Times Mirror Company	Geoffrey A. Robinson	New Mass, Media, Inc.
19992340	The Times Mirror Company	G. Christine Austin	New Mass, Media, Inc.
19992341	Voting Trust dated December 4, 1968 of Hallmark Cards.	The Picture People, Inc	The Picture People, Inc.
19992347	Gerald W. Schwartz	American Buildings Company	American Buildings Company.
19992351	Fremont Partners, L.P	Juno Lighting, Inc	Juno Lighting, Inc.
19992353	Philadelphia Consolidated Holding Corp	The Jerger Company, Inc	The Jerger Company, Inc.
19992355	U.S. Concrete, Inc	Central Concrete Supply Co., Inc	Central Concrete Supply Co., Inc.
19992356	Fluoroware, Inc. Employee Stock Ownership Plan.	Estate of Wayne C. Bongard	Empak, Inc.
19992357	Estate Of Wayne C. Bongard	Fluoroware, Inc. Employee Stock Ownership Plan.	Fluoroware, Inc. Employee Stock Ownership Plan.
19992361	Roger S. Penske	United Auto Group, Inc	United Auto Group, Inc.
19992363	Barry Diller	The Seagram Company Ltd	OFI Holdings, Inc., PloyGram Holdings, Inc.
19992364	Great Lakes Chemical Corporation	Monsanto Company	NSC Technologies Company, LLC.
19992370	B III Capital Partners, L.P	Waste Systems International, Inc	Waste Systems International, Inc.
19992375	First American Financial Corporation	Donald A. Foss	Teletrack, Inc.

Transactions Granted Early Termination—04/27/1999

19992298	Banque Nationale de Paris S.A	Societe Generals S.A	Societe Generals S.A.
19992299	Banque Nationale de Paris S.A	Paribas S.A	Paribas S.A.
19992374	Canandaigua Brands, Inc	Bernard Amault	Moet Hennessy, Inc., Simi Winery, Inc.
19992376	J. Norman Estes	John L. Black, Jr	The Waverley Group, Inc.
19992379	Samir A. Rehani	LeRoy Luther	Triangle Tool Corporation.
19992384	Cisco Systems, Inc	Fibex Systems	Fibex Systems.
19992389	BankBoston Corporation	American Business Products, Inc	BookCrafters, USA, Inc.
19992391	Meiji-Seika Kaisha, Ltd	Howard Perley and Rona Perley Trustees.	Laguna Cookie Company, Inc.
19992393	CoreComm Limited	MegINet Inc	MegINet Inc.
19992395	Golder, Thoma, Cressey, Rauner Fund V, L.P.	Gary W. Sneed	CNP Solutions, Inc.
19992396	Young & Rubicam Inc	KnowledgeBase Marketing, Inc	KnowledgeBase Marketing, Inc.
19992400	Warburg, Pincus Equity Partners, L.P	Judith C. Inglis	American Show Management, Inc.
19992401	Warburg, Pincus Equity Partners, L.P	John R. Inglis	American Show Management, Inc.
19992404	Group Maintenance America Corp	C.A. Solinger	Cardinal Contracting Corporation.
19992416	Lennox International Inc	Bernard J. Wallis	Livernois Engineering Holding Company.
19992428	Health Management Associates, Inc	Community Hospital of Lancaster Foundation.	Community Hospital of Lancaster.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/28/1999			
19992304	MAN aktiengesellschaft	Mannesmann AG	Mannesmann Demag Corporation.
19992305	Siemag Weiss Stiftung & Co. KG	Mannesmann AG	Mannesmann Demag Corporation.
19992321	Clear Channel Communications, Inc	Alvis E. Owens, Jr	Owens Broadcasting Co., L.L.C., OwensMaC Radio, L.L.C.
19992322	Clear Channel Communications, Inc.	MAC America Communications, Inc	OwensMAC Radio, L.L.C.
19992377	Omnicom Group Inc	Jordan Zimmerman	Zimmerman & Partners Advertising, Inc.
19992381	Volex Group p.l.c	Belden Inc.	Belden Wire & Cable Company.
19992390	Solutia Inc	Akzo Nobel NV	CPFilms, Inc.
19992397	Ion Beam Applications S.A	Griffith Laboratories, Inc	Griffith Micro Science.
19992403	Houghton Mifflin Company	G. Warren Schloat, III	Sunburst Communications, Inc.
19992406	Brentwood Associates Buyout Fund II, L.P.	CNF Transportation Inc	Vantage Parts.
19992423	Cisco Systems, Inc	Sentient Networks, Inc	Sentient Networks, Inc.
19992430	Jackson Products, Inc	Morton International, Inc	Morton International, Inc.
Transactions Granted Early Termination—04/29/1999			
19992179	John J. Rigas	Frontier VIsion Partners, L.P	Frontier Vision Partners, L.P.
19992234	HarbourVest Partners V-Direct Fund, L.P.	C. Philip Rainwater	Benchmark Media, Inc.
19992236	Alta Communications VII, L.P	C. Philip Rainwater	Benchmark Media, Inc.
19992242	University Hospitals Health System, Inc	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
19992243	Sisters of Charity of St. Augustine	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
19992285	John J. Rigas	Entergy Corporation	Entergy Hyperion Telecommunications of Arkansas, LLC, Entergy Hyperion Telecommunications of Louisiana, LLC, Entergy Hyperion Telecommunications of Mississippi, LLC.
19992286	John J. Rigas	John J. Rigas	Entergy Hyperion Telecommunications of Arkansas, LLC, Entergy Hyperion Telecommunications of Louisiana, LLC, Entergy Hyperion Telecommunications of Mississippi, LLC.
19992336	Graham Spencer	AT&T Corp	At Home Corporation.
Transactions Granted Early Termination—04/30/1999			
19992043	RWE AG	Eagle Pacific Industries, Inc	Eagle Pacific Industries, Inc.
19992251	United Surgical Partners International Inc.	Columbia/HCA Healthcare Corporation	Texas Outpatient Surgical Center, Inc.
19992279	Fiskars Corporation	Fineter S.A	Syroco, Inc.
19992337	George Bell	AT&T Corp	At Home Corporation.
19992352	Magne Tek, Inc	Richard L. Pratt	Electric Motor Systems, Inc., Electromotive Systems, Inc., EMS/Rosa Automation Engineering, Inc.
19992378	EMCOR Group, Inc	Energy Systems Industries, Inc	Energy Systems Industries, Inc.
19992392	Acosta-PMI, Inc	Kelley-Clarke, Inc	Kelley-Clarke, Inc.
19992415	New England Electric System	Eastern Utilities Associates	Eastern Utilities Associates.
19992432	Fortis (B)	American Bankers Insurance Group, Inc	American Bankers Insurance Group, Inc.
19992439	Tekelec	Leslie K. Wagner and Harvey Wagner (spouses).	IEX Corporation.
19992442	Cypress Merchant Banking Partners L.P	Harvey Ball	Liberty Electrical Supply, Co., Inc.
19992445	Barry Diller	Robert Diener	TMF, Inc.
19992446	Barry Diller	David Litman	TMF, Inc.
19992450	Pan American Hospital Corporation	United HealthCare Corporation	CAC Medical Centers, Inc., United HealthCare Services, Inc.
19992451	Welsh, Carson, Anderson & Stowe Vill, L.P.	Newco	Newco.
19992453	General Electric Company	Philip A. Belyew	Transit Group, Inc.
19992460	Health Care Capital Partners, L.P	Newco	Newco.
19992471	Quanta Services, Inc	Harold L. Chapman, Jr	H.L. Chapman Leasing Co., H.L. Chapman Pipeline Construction, Inc., Sullivan Welding, Inc.
19992473	Harold L. Chapman, Jr	Quanta Services, Inc	Quanta Services, Inc.
Transactions Granted Early Termination—05/04/1999			
19992435	PepsiCo, Inc	The Pepsi Bottling Group, Inc	Pepsi-Cola Metropolitan Bottling Company, Inc.

Trans #	Acquiring	Acquired	Entities
19992436	The Pepsi Bottling Group, Inc	PepsiCo, Inc	Bottling Group, LLC.
19992448	Inverness/Phoenix Partners LP	Trico Marine Services, Inc	Trico Marine Services, Inc.
Transactions Granted Early Termination—05/05/1999			
19992213	Triumphy Group, Inc	Leona M. Scruggs	Ralee Engineering Company.
19992284	Omnicare, Inc	Forrest L. Preston	Life Care Pharmacy Services, Inc.
19992402	SierraPine Limited	Weyerhaeuser Company	Weyerhaeuser Company.
19992418	Anglo American Corporation of South Africa Ltd.	Minorco S.A	Minorco S.A.
19992422	Bell Atlantic Corporation	Bell Atlantic Corporation	Hudson Valley RSA Cellular Partnership.
19992425	FirstEnergy Corp	GPU, Inc	Pennsylvania Electric Company.
19992426	Quanta Services, Inc	Stephen Bauchman	Bonneville Construction Co., Incorporated.
19992427	Niagara Corporation	Glynwed International plc	Glynwed Steels Limited.
19992429	NCO Group, Inc	H.I.G. Investment Group, L.P	DCI Holding, Inc.
19992431	Cablevision Systems Corporation	AT&T Corp	At Home Corporation.
19992443	GTCR Fund VI, L.P	National City Corporation	National Processing Company, NPC Check Services, Inc.
19992452	Welsh, Carson, Anderson & Stowe VIII, L.P.	Concentra Managed Care, Inc	Concentra Managed Care, Inc.
19992456	TeleCorp PCS, Inc	AT&T Corp	AT&T Wireless PCS Inc.
19992462	Doug Greene	Penton Media, Inc.	Penton Media, Inc.
19992463	Penton Media, Inc	Doug Greene	New Hope Communications, Inc.
Transactions Granted Early Termination—05/07/99			
19991027	Fox Paine Capital Fund, L.P	ATU Communications, Inc.	ATU Communications, Inc.
19992291	BEC Energy	Commonwealth Energy System	Commonwealth Energy System.
19992292	Commonwealth Energy System	BEC Energy	BEC Energy.
19992394	Cadbury Schweppes plc	The Procter & Gamble Company	Hawaiin Punch Assets.
19992417	GS Capital Partners, II, L.P	Niagara Mohawk Holdings, Inc.	Niagara Mohawk Power Corporation.
19992440	PIA Merchandising Services, Inc	Robert G. Brown	SPAR Acquisition, Inc.
19992447	Professionals Group, Inc	Professionals Group, Inc	MEEMIC Holdings, Inc.
19992458	AmericaWest Holdings Corporation	Candant Corporation	National Leisure Group, Inc.
19992467	OCM Fund II	Aureal Semiconductor Inc	Aureal Semiconductor Inc.
19992470	Glencore Holding AG	Columbia Falls Aluminum Company	Columbia Falls Aluminum Company.
19992472	Franco Manufacturing Co. Inc	Sara Lee Corporation	Sara Lee Corporation.
19992474	Wand Equity Portfolio II L.P	Foster & Gallagher, Inc	The Popcorn Factory, Inc.
19992475	D & K Healthcare Resources, Inc	Harvey C. Jewett, IV	Jewett Drug Co., Inc.
19992476	Time Warner Inc	Barry Silverstein	MetroComm AxS, L.P.
19992477	Newbridge Networks Corporation	TeleHub Communications Corporation	TERAbridge Technologies Corporation.
19992480	Harte-Hanks, Inc	Kenneth J. Boone	Direct Marketing Associates, Inc.
19992481	General Electric Company	H.I.G. Investment Group, L.P	H.I.G. Vinyl, Inc.
19992484	Charles H. Bundrant	Nichirei Corporation	Nichirei Foods America, Inc.
19992485	Science Applications International Corporation.	Broadway & Seymour, Inc	Broadway & Seymour, Inc.
19992487	SOFTBANK Corp	E-Loan, Inc	E-Loan, Inc.
19992489	WICOR, Inc	Herbert Lipner	Omni Corporation.
19992490	Toymax International, Inc	Charles D. Burkett, Jr. and Robert M. Burkett.	Monogram International, Inc., Monogram Products (HK) Limited.
19992491	True North Communications Inc	Robert C. and Jo Anne Hacker	The Hacker Group, Ltd.
19992495	Raymond James Financial, Inc	Bank One Corporation	Roney & Co. L.L.C.
19992503	Group 1 Automotive, Inc	Gene Messer Ford of Amarillo, Inc	Gene Messer Ford of Amarillo, Inc.
19992504	Group 1 Automotive, Inc	Gene Messer Ford, Inc	Messer Lubbock Dealership.
19992506	Paul G. Allen	StadiaNet Sports, Inc	StadiaNet Sports, Inc.
19992513	MedQuist, Inc	Harris Corporation	Lanier Professional Services, Inc.
19992519	Plexus Corp	SeaMED Corporation	SeaMed Corporation.
19992521	Amazon.com, Inc	e-Niche Incorporated	e-Niche Incorporation.
19992522	President and Fellows of Harvard College.	The J.H. Heafner Company, Inc	The J.H. Heafner Company, Inc.
19992523	Christropher Goldsbury, Jr	Wal-Mart Stores, Inc	McLane Foods, Inc.
19992525	Ronald W. Burkle	Alliance Entertainment Corp	Alliance Entertainment Corp.
19992528	Becton, Dickinson and Company	Kenneth S. Fong	Clontech Laboratories, Inc.
19992529	Kenneth S. Fong	Becton, Dickinson and Company	Becton, Dickinson and Company.
19992530	Fiserv, Inc	JWGenesis Financial Corp	JWGenesis Clearing Corp.
19992537	Group 1 Automotive, Inc	Robert C. Sansing	Avalon Nissan, Inc., Heritage Advertising, Inc., Sandy Sansing Chevrolet, Inc., Sandy Sansing Imports, Inc., Sandy Sansing Nissan, Inc. Southern Chevrolet-Olds-Geo, Inc.
19992539	J. Baker, Inc	Edison Brothers Stores, Inc (debtor-in-possession).	Edison Brothers Stores, Inc.

Trans #	Acquiring	Acquired	Entities
19992543	E. Thomas Martin	DSI Toys, Inc	DSI Toys, Inc.
19992549	Temple-Inland Inc	Fidelity Funding Financial Group, Inc	Fidelity Funding Acceptance, Fidelity Funding, Inc., Fidelity Funding of California, Inc.
19992567	Windward Capital Partners II. L.P	Anacomp, Inc	Anacomp, Inc/Anacomp Limited.
19992571	Stonington Capital Appreciation 1994 Fund, L.P.	Pasquale J. Santangelo	Lincoln Technical Institute Inc.
19992576	Future Publishing Holdings Limited	Chris Anderson	Imagine Media, Inc.
19992585	Credit Suisse Group	Arch Communications Group, Inc	Arch Communications Group, Inc.
19992588	Citigroup Inc	CORT Business Services Corporation	CORT Business Services Corporation.
Transactions Granted Early Termination—05/11/1999			
19992420	Minorco S.A	Anglo American Corporation of South Africa Ltd.	Anglo American Corporation of South Africa Ltd.
19992441	Safeguard International Fund, L.P	VIAG AG	NF Holding, Inc.
19992496	Ripplewood Partners, L.P	Charles T. Meyer, III and Carole Meyer	Meyer's Bakeries, Inc.
19992497	Textron Inc	Lincolnshire Equity Fund, L.P	Energy Mfg. Co., Inc, Williams Machine & Tool Co.
19992516	Golder, Thoma, Cressey, Rauner Fund V, LP.	Fluor Corporation	S & R Equipment Co., Inc.
19992534	Global Crossing Ltd	Frontier Corporation	Frontier Corporation.
19992535	Joseph P. Clayton	Global Crossing Ltd.	Global Crossing Ltd.
19992538	Francois Pinault	Elf Aquitaine	Sanofi Group.
19992546	W.R. Grace & Co	Textron Inc	Textron System Corporation.
19992557	Stiftung Hasler Werke	ABB AB	ABB Automation, Inc.
19992558	Stiftung Hasler Werke	ABB AG	ABB Automation, Inc.
19992560	Snyder Communications, Inc	David F. Kirwan	Broadwell Capital Group, Inc., d/b/a/ Broadwell Marketing Group, Inc.
19992565	Apollo Investment Fun IV, L.P	Rare Medium Group, Inc	Rare Medium Group, Inc.
19992577	Atlantic Equity Partners International II, L.P.	CPI Holding Corporation	CPI Holding Corporation.
Transactions Granted Early Termination—05/12/1999			
19992388	Randy M. Long	Tosco Corporation	Tosco Corporation.
19992493	Jospeh Littlejohn & Levy Fund II, L.P	Lockwood Holmes	Holmes Lumber Company.
19992494	General Electric Company	iXL Enterprises, Inc	Consumer Financial Network, Inc.
19992500	Henkel KGaA	The Dial Corporation	The Dial Corporation.
19992501	The Dial Corporation	Henkel KGaA	Henkel KGaA.
19992508	Lance, Inc	Stolberg Partners, L.P	Cape Cod Holdings, Inc.
19992509	Lance, Inc	Stephen F. Bernard	Cape Cod Holdings, Inc.
19992542	Tom Brown, Inc	Unocal Corporation	Union Oil Company Of California.
19992553	Susan G. Mandl	Lucent Technologies Inc	Lucent Technologies Inc.
Transactions Granted Early Termination—05/13/1999			
19990822	SNIA BPD S.pA	Gambro AB	COBE Cardiovascular, Inc/COBE Laboraties, Inc.
19991949	First Data Corporation	Bank One Corporation	Paymentech, Inc.
Transactions Granted Early Termination—05/14/1999			
19990804	Provident Companies, Inc	UNUM Corporation	UNUM Corporation.
19992380	Sprint Corporation	People's Choice TV Corp	People's Choice TV Corp.
19992465	Bull Run Corporation	Universal Sports America, Inc	Universal Sports America, Inc.
19992478	General Motors Corporation	Pacifica Group Limited	PBR Automotive Tennessee, Inc.
19992499	MS Acquisition Corp	Zenith Industrial Corporation	Zenith Industrial Corporation.
19992532	RailWorks Corporation	Douglas Hutchinson	Neosho Incorporated.
19992533	RailWorks Corporation	Steven Hutchinson	Neosho Incorporated.
19992536	Northern Telecom Limited	Net2000 Communications, Inc	Net2000 Communications, Inc.
19992545	Sager Electrical Supply Company, Inc	Sheila Poncher, Trustee	California Switch & Signal, Inc.
19992547	Carlisle Companies Incorporated	J. Charles Peterson	Johnson Welding & Manufacturing Co., Inc.
19992550	LHS Group, Inc	Priority Call Management, Inc	Priority Call Management, Inc.
19992559	CBS Corporation	WinStar Communications, Inc	Office.com Inc.
19992561	Sumner M. Redstone	Video City, Inc	VideoLand, Inc.
19992570	Thomas M. Begel	Joseph A. and Mae Butcko	Crescive Die and Tool, Inc.
19992578	Apache Corporation	N.F. Koninklije Nederlandsche Petroleum Maatshappij.	Shell Oil Company.
19992581	Schneider S.A	Kent J. Holce	Veris Industries, Inc.
19992582	Brewster Kahle	Amazon.com, Inc	Amazon.com, Inc.
19992589	Toys ''R'' Us, Inc	Genesis Direct, Inc	Genesis Direct Memphis Operations, LL, Genesis Direct Memphis Services, LLC.

Trans #	Acquiring	Acquired	Entities
19992590	Mr. and Mrs. Frank D. Osborn	ML Media Partners, L.P	WICC Associates, WEBE Associates.
19992597	Gaylord Entertainment Company	CBS Corporation	CBS Corporation.
19992598	CBS Corporation	Gaylord Entertainment Company	Gaylord Communications, Inc., Gaylord Television Company.
19992599	Anthem Insurance Companies, Inc	New Hampshire-Vermont Health Service d/b/a BCBS of NH.	Health Initiatives, Inc., Matthew Thornton Health Plan, Inc., Matthew Thornton Insurance, Inc., New Hampshire-Vermont Health Service d/b/a BCBS of NH.
19992609	SLI, Inc	Gary J. Siegal	Supreme Corporation.
19992610	SLI, Inc	Bruce I. Siegal	Supreme Corporation.
19992612	Sutton Place Gourmet, Inc	Andrew & Nina Balducci	Balducci Enterprises, Inc.
19992613	General Motor Corporation	AT&T Corp	Tele-Communicatins, Inc.

Transactions Granted Early Termination—05/17/1999

19992502	Morgan Stanley Dean Witter & Co	Arm Holdings plc	Arm Holdings plc
19992531	International Business Machines Corporation.	Comdisco, Inc	Comdisco, Inc.
19992591	Wild Oats Markets, Inc	General Nutrition Companies, Inc	Nature's Fresh Northwest, Inc.
19992603	Canandaigua Brands, Inc	Franciscan Vineyards, Inc	Franciscan Vineyards, Inc.
19992614	BG Media Investors, L.P	Equilease Holding Corp	Corn South Telecable, Inc.
19992616	Solectron Corporation	Sequel, Inc	Sequel, Inc.
19992624	Kleiner Perkins Caufield & Byers Vill, L.P.	Amazon.com, Inc	Amazon.com, Inc.
19992625	Greenwich Street Capital Partners II, L.P.	IMC Mortgage Company	IMC Mortgage Company.
19992638	Lehman Brothers Offshore Investment Partners II L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
19992639	Lehman Brothers Capital Partners IV, L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
19992642	Simon Property Group, Inc	Stephen R. Karp	WellsPark Group Limited Partnership.
19992643	URS Corporation	Dames & Moore Group	Dames & Moore Group.
19992652	SCP Private Equity Partners, L.P	Seagram Co. Ltd	Propaganda Films, Inc.
19992664	Willis Stein & Partners II, L.P	Donald L. Sanneman	LISN, Inc./Arion, Inc.
19992671	Ceridian Corporation	ABR Information Services, Inc	ABR Information Service, Inc.
19992676	Employee Stock Ownership Plan of Krause ESOP.	Landmark Communications, Inc	Landmark Specialty Publications, Inc.
19992677	Aegis Group plc	Market Facts, Inc	Market Facts, Inc.

Transactions Granted Early Termination—05/18/1999

19992548	Carlisie Companies Incorporated	Edmund A. Ricci	Johnson Welding & Manufacturing Co., Inc.
19992579	Royal Dutch Company	Apache Corporation	Apache Corporation.
19992644	RCBA Strategic Partners, L.P	URS Corporation	URS Corporation.
19992645	eBay Inc.*	Bernard A. Osher	Butterfield and Butterfield Auctioneers Corporation, HBJ Partners, LLC, 111 Potrero Partner LLC.
19992646	Bernard A. Osher	eBay Inc.*	eBay Inc.*
19992647	eBay Inc.*	Irving Rabin	HBJ Partners, LLC, 111 Potrero Partner LLC.
19992648	Irving Rabin	eBay Inc.*	eBay Inc.*
19992653	Daniel M. Snyder	Estate of Jack Kent Cooke	Jack Kent Cooke Incorporated.
19992667	The Coca-Cola Company	Jerry Whitlock	Whitlock Packaging Corporation.
19992672	CBS Corporation	W. Don Cornwell	Granite Broadcasting Corporation.

Transactions Granted Early Termination—05/19/1999

19992507	Providence Healthcare Company	Columbia/HCA Healthcare Corporation	Doctors Hospital of Opelousas Limited Partnership.
19992515	American Tissue Inc	Crown Vantage, Inc	Crown Paper Co.
19992517	Morton Plant Hospital Association	Tenet Healthcare Corporation	RHPC, Inc.
19992551	La-Z-Boy Incorporated	Martin G. and Marlene G. Silver (husband and wife).	Bauhaus USA, Inc.
19992562	Diageo plc	Supervalu Inc	Hazelwood Farms Bakeries, Inc.
19992594	Bernard Ebbers	Compart SpA	Intermarine USA, L.L.C. and Intermarine Yachting, Inc.
19992595	American Water Works Company, Inc	National Enterprises, Inc	National Enterprises, Inc.
19992611	Wolseley plc	Thomas O. Moore, Jr	Summit Structures, Inc.
19992628	Spartech Corporation	Altrista Corporation	Altrista Plastics Corporation.
19992633	Michael W. Lynch	Metro Metals Corporation	Metro Metal Corporation.
19992690	Bell Atlantic Corporation	Mario Gabelli	Rivgam Communicators, L.L.C.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—05/20/1999			
19992584	CHRISTUS Health	Columbia/HCA Healthcare Corporation	Highland Hospital.
Transactions Granted Early Termination—05/21/1999			
19992065	E.I. du Pont de Nemours and Company	Pioneer Hi-Bred International, Inc	Pioneer Hi-Bred International, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303 Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15341 Filed 6–16–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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.

Proposed Project 1. Baseline Survey of Youth for the Federal Evaluation of Initiatives Funded Under Section 510 of the Maternal and Child Health Block Grant Program—The Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104–193) established Section 510 of the Maternal and Child Health Block Grant Program, the purpose of which is to support state efforts promoting abstinence only education. The Balanced Budget Act of 1997 (P.L. 105–33) established a requirement to ''evaluate programs under Section 510.'' This proposed information collection will gather baseline information for the evaluation—NEW—Respondents: Individuals; Number of Respondents: 7,000; Average Burden per Response: .75 hours; Burden: 5,250 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: June 11, 1999.

William Beldon,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 99–15409 Filed 6–16–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), all authorities vested in the Secretary of Health and Human Services under Public Law 105–369, the Ricky Ray Hemophilia Relief Fund Act of 1998. This delegation excludes the authority to issue regulations and to submit reports to Congress. This authority may be redelegated.

In addition, I hereby ratify and affirm any actions taken by the HRSA Administration or other HRSA officials which involved the exercise of this authority. This delegation is effective upon date of signature.

Dated: June 8, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–15343 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Robert P. Liburdy, Ph.D., Lawrence Berkeley National Laboratory: Based on an investigation report by the Lawrence Berkeley National Laboratory (LBNL) dated July 7, 1995, and an analysis of the data and information from Dr. Liburdy obtained by ORI during its oversight review, ORI found that Dr. Liburdy, former staff biochemist at LBNL, engaged in scientific misconduct in biomedical research by intentionally falsifying and fabricating data and claims about the purported cellular effects of electric and magnetic fields (EMF) that were reported in two scientific papers: (1) Liburdy, R.P. ''Biological interactions of cellular systems with time-varying magnetic fields. Annals of the New York Academy of Sciences 649:74–95, 1992 (''ANYAS paper''); and (2) Liburdy, R.P. ''Calcium signaling in lymphocytes and ELF fields.'' FEBS Letters 301:53–59, 1992 (the ''FEBS Letters paper''). The ANYAS and FEBS Letters papers were supported by a National Cancer Institute (NCI), National Institutes of Health (NIH), grant.

The ANYAS and FEBS Letters papers reported data indicating that EMF exert a biological effect by altering the entry of calcium across a cell's surface membrane. EMF, which are ubiquitous forms of radiation that arise from diverse sources such as power lines, home wiring, and household appliances, have been of public concern for potential health effects. Dr. Liburdy's claims were potentially very important when published in 1992 because they purported to link EMF and calcium signaling, a fundamental cell process governing many important cellular functions.

Dr. Liburdy has entered into Voluntary Exclusion Agreement with ORI. As part of this Agreement, Dr. Liburdy neither admits nor denies ORI's finding of scientific misconduct. The settlement is not an admission of liability on the part of the respondent. As part of the Voluntary Exclusion Agreement, Dr. Liburdy has voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F. R. Part 76 (Debarment Regulations) for the three (3) year period beginning May 28, 1999;

(2) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for the three (3) year period beginning May 28, 1999; and

(3) To submit letters to the journals ANYAS and FEBS Letters, requesting retraction of Figure 12 of the ANYAS paper and of Figures 6 and 7 of the FEBS Letters paper within 30 days of the date of the agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–15416 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–17–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–99–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Public Health Prevention Service Program—New—Epidemiology Program Office (EPO). In 1995, senior CDC leadership asked for a review of CDC's role in developing public health workers. As a result of the review, the Public Health Prevention Service (PHPS) program was established in 1997, to be carried out by the Epidemiology Program Office (EPO). The purpose of the PHPS program is to improve the nation's public health practice by preparing entry-level public health professionals to conduct prevention programs that improve health and prevent injury and to manage emerging public health problems.''

Implicit in the creation of the program is the expectation that the PHPS participants would be a ''new breed'' of public health professionals who would owe primary allegiance to prevention and public health as disciplines rather than to specific programs, be comfortable working across a variety of programs and in multiple levels of jurisdictions, and be knowledgeable about and prepared to meet future challenges in public health in planning, implementing, managing, and evaluating scientifically sound prevention programs and interventions.

PHPS participants (Prevention Specialists) are selected annually in a national competition. Each year, approximately 25 PHPS participants are chosen from a pool of about 100 applicants. During their 3-year participation in the PHPS program, they undertake formal training, engage in a series of rotations throughout CDC and, finally, are posted to 2-year assignments with health departments at the State, county, or local level. Throughout the off-site portion of the program, they are intended to participate in scheduled training through periodic on-site sessions at CDC as well as through distance learning. At the conclusion of the three years, they are available for employment in any setting.

Data are needed to determine if the PHPS program is meeting its goals, including: (1) Broad exposure to multiple disciplines and levels of government, (2) exposure to important management and leadership skills, and (3) contribution to the creation of a pool of qualified leaders who will remain in and rise rapidly to leadership in public health at Federal, State, and local levels. In addition, data are needed to monitor the implementation of the program and allow for continuous improvement of processes.

While surveys and focus groups are being conducted with the PHPS participants and their CDC supervisors throughout the course of their 3-year participation, these data need to be supplemented with information from others including: (1) ''Graduates'' of the PHPS program: to determine if they are assuming leadership roles in public health and the aspects of the PHPS program that proved most helpful, (2) local health department staff who supervise PHPS participants during their field assignments: to determine if the PHPS participants are exhibiting the level of skills imparted during their training period and are adding value to State and local public health efforts, and (3) those who are offered PHPS positions but choose not to participate: to determine how to make the program more attractive and to enable the program to improve marketing, application, and selection processes.

Results from this research will be used to help CDC identify ways in which the PHPS program can be enhanced and its processes improved. More importantly, it will allow CDC to assess whether the PHPS program is an effective mechanism for creating a pool of broadly-trained public health leaders.

The PHPS program will track participants, graduates, and their supervisors and employers for a period of 10 years. This request covers the first three years only. The total annualized cost to the respondents is $2,169.50.

Respondents	Number of respondents	Responses/respondent	Avg. burden/response (in hrs.)	Total hour burden (in hrs.)
Year 1				
Candidates:				
Inquiring but not applying	100	1	10/60	17.00
Interviewed but not offered PHPS slots	50	1	10/60	8.50
Offered PHPS slots but not accepting	6	1	10/60	1.00
Supervisors:.				
For first-year field assignment	25	1	15/60	6.25
For second-year field assignment	25	1	15/60	6.25
For permanent employment [1]	0	1	10/60	0
Who requested but were not assigned a PHPS participant	50	1	10/60	8.50
PHPS participants:				
Graduating from the program [1]	0	1	15/60	0
Year 2				
Candidates:				
Inquiring but not applying	100	1	10/60	17.00
Interviewed but not offered PHPS slots	50	1	10/60	8.50
Offered PHPS slots but not accepting	6	1	10/60	1.00
Supervisors:				
For first-year field assignment	25	1	15/60	6.25
For second-year field assignment	25	1	15/60	6.25
For permanent employment [1]	25	1	10/60	4.25
Who requested but were not assigned a PHPS participant	50	1	10/60	8.50
PHPS participants:				
Graduating from the program [1]	25	1	15/60	6.25
Year 3				
Candidates:				
Inquiring but not applying	100	1	10/60	17.00
Interviewed but not offered PHPS slots	50	1	10/60	8.50
Offered PHPS slots but not accepting	6	1	10/60	1.00
Supervisors:				
For first-year field assignment	25	1	15/60	6.25
For second-year field assignment	25	1	15/60	6.25
For permanent employment [1]	50	1	10/60	8.50
Who requested but were not assigned a PHPS participant	50	1	10/60	8.50
PHPS participants:				
Graduating from the program [1]	50	1	15/60	12.50
Total Burden	.....	.....	.....	174.00
Average Annual Burden	.....	.....	.....	58.00

[1] PHPS is a three year program enrolling 25 new participants each year. The first class will graduate in Year 2 of this data collection; 25 new graduates will be added to the pool of graduates each year thereafter.

2. Site-Specific Evaluation—New—Agency for Toxic Substances and Disease Registry (ATSDR). Evaluation is a critical component in ATSDR's site-related public health actions, both to ensure the successful application of site-specific/site-related intervention activities, and the effective management of resources. As ATSDR's divisions and offices assume expanded responsibilities for sites in program areas such as health assessment, health consultations, health studies, research and education, information, and communication, their interest in promoting improvements in evaluating their site-specific and site-related public health actions has grown accordingly.

An ATSDR inter-divisional workgroup has developed an integrated and more focused approach for assessing ATSDR's site-related activities. The site-specific protocol encompasses data collections from three groups:

1. Members of the site community—to determine if knowledge, attitudes, and beliefs (KAB) have changed as a result of ATSDR's intervention on the site and to assess their satisfaction with the process used to obtain their input, provide information to them , and by which ATSDR made recommendations about dealing with hazards in their community;

2. Members of the provider community—to determine if their KAB regarding environmental hazards and appropriate diagnosis, referral, and treatment of those exposed have changed in the appropriate direction as a result of ATSDR's activities on-site; and

3. Members of a larger ''contrast'' community—to determine if changes in KAB on-site are due to ATSDR activities or other confounding factors and secular trends.

Mainly, these data will be used for management feedback and program improvement. Data will not be used to make statistically generalizable statements or draw national estimates. Instead, results from these data collections will be used by ATSDR to fine-tune its activities at individual sites, to compare outcomes across sites, and to paint an overall picture of the amount and type of impacts ATSDR is having on site.

The evaluation of ATSDR's site activities is intended to be an ongoing

agency activity. This data collection covers only the first three years. The total annualized cost to the respondents is $30,423.

	Respondents	Responses/ respondent*	Avg. burden/ respondent (in hrs.)	Total burden (in hrs.)
New Sites:				
Site community (phone)	100	2 (10)	0.1667	333
Contrast community (phone)	300	2 (10)	0.1667	1000
Health care providers (mail)	50	2 (10)	0.1667	166
Existing Sites:				
Site community (phone)	100	1 (10)	0.1667	167
Contrast community (phone)	300	1 (10)	0.1667	500
Health care providers (mail)	50	1 (10)	0.1667	83
Total Burden				2,249

*Responses per Respondent per Site (10)

3. National Vital Statistics Report Form (0920–0213)—Revision—National Center for Health Statistics (NCHS). The compilation of national vital statistics dates back to the beginning of this century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics Report (renamed from the Monthly Vital Statistics Report in January 1998) provides counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces following the end of each month. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. There are no direct costs to respondents; the data are routinely available in each reporting office as a by-product of ongoing activities. Earlier OMB approvals of this data collection involved four separate forms, all of which are combined into a single multi-purpose form for this current approval request.

Respondents	Number of respondents	Responses/ respondent	Avg. Burden/ response (in hrs.)	Total burden (in hrs.)
State and Territory Registration Officials	57	12	0.2	137
New Mexico County Officials	60	12	0.1	72
Total				209

4. Annual Marriage and Divorce Statistical Report Form (0920–0211)—Reinstatement with Change-National Center for Health Statistics (NCHS). Compilation of national vital statistics dates back to the beginning of this century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics System constitutes a program to provide statistics on births, deaths, fetal deaths, marriages, and divorces. One part of this function is to provide final annual counts of marriages and divorces by month for the United States and for each State. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year.

Respondents for the Annual Marriage and Divorce Statistical Report Form are registration officials in each State, the District of Columbia, New York City, Guam, Puerto Rico, Virgin Islands, Northern Marianas, and American Samoa. In addition, counts of marriages will be collected from individual counties in New Mexico, and counts of divorces will be collected from individual counties in California, Colorado, Indiana, Louisiana, New Mexico, and the boroughs of New York City due to a lack of centralized complete collections in these registration areas. There are no direct costs to respondents; the data are routinely available in each reporting office as a by-product of ongoing activities. Earlier OMB approvals of this data collection involved four separate forms, some of which are combined into a single multi-purpose form for this current approval request. Counts will no longer be requested from all States for all counties in each State.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State/Territory/City Registration Officials	56	1	0.5	28
County/Borough Officials	348	1	0.5	174
Total				202

Dated: June 10, 1999.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 99–15373 Filed 6–16–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Request for Nominations of Candidates To Serve on the National Vaccine Advisory Committee, Department of Health and Human Services

The Public Health Service (PHS) is soliciting nominations for possible membership on the National Vaccine Advisory Committee (NVAC). This committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States; recommends research priorities and other measures the Director of the National Vaccine Program should take to enhance the safety and efficacy of vaccines; advises the Director of the Program in the implementation of sections 2102, 2103, and 2104, of the PHS Act; and identifies annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104, of the PHS Act.

Nominations are being sought for individuals engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies, or public health organizations. Federal employees will not be considered for membership. Members may be invited to serve a four-year term.

Close attention will be given to minority and female representation; therefore nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by July 30, 1999, to: Gloria Sagar, Committee Management Specialist, NVAC, National Vaccine Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333. Telephone and facsimile submission cannot be accepted.

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: June 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–15375 Filed 6–16–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–3 p.m., July 9, 1999.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The Committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters To Be Discussed: Agenda items will include updates from CDC Director, Jeffrey P. Koplan, M.D., followed by committee discussion on the agency's priorities, including strengthening the public health infrastructure, prevention research, and emerging infections. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda Kay McGowan, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333, telephone 404/639–7080.

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: June 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–15376 Filed 6–16–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services Task Force; Meeting

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting:

NAME: Guide to Community Preventive Services (GCPS) Task Force Meeting.

TIMES AND DATES: 8:45 a.m.–5:15 p.m., June 23, 1999. 8:30 a.m.–3:15 p.m., June 24, 1999.

PLACE: The Sheraton Hotel Atlanta, Courtland and International Boulevard, Atlanta, Georgia 30303, telephone 404/659–6500.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

PURPOSE: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific

evidence and current expertise regarding essential public health services and what works in the delivery of those services.

MATTERS TO BE DISCUSSED: Agenda items include: an overview of Activity changes and plans; a review of progress on the development of Guide chapters; an update on the dissemination/implementation efforts related to the Guide; an update on the Vaccine Preventable Disease Chapter, dissemination activities related to such as well as the discussion of the ''chapter at work'' or its impact to date; an update on several chapters including Sociocultural Environment, Diabetes, Alcohol and Prevention of Mental Disorder; an update on the Guide database activities; an update on selected ''Healthy Aging'' project activities by the Health Care Financing Administration; a discussion about the Economic Evaluation Methods utilized in development of the Guide and a discussion on the conceptualization of the Guide and overall dissemination strategies.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Stephanie Zaza, M.D., M.P.H., Chief, CPS Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301.

Persons interested in reserving a space for this meeting should call 404/639–4301 by close of business on June 17, 1999.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of the 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: June 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–15374 Filed 6–16–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 29, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss trade secret and/or confidential information relevant to pending investigational new drug applications (IND's) and drug development plans.

Procedure: On July 29, 1999, from 8:30 a.m. to 9:30 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 22, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 22, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 29, 1999, from 9:30 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information relevant to pending IND's and drug development plans. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 10, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–15401 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0260 and R–0275]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Request:* Extension of a currently approved collection; *Title of Information Collection:* Quality Improvement System for Managed Care (QISMC); *Form Number:* HCFA–R–0260 (OMB approval #: 0938–0745); *Use:* The primary purpose of the QISMC standards and guidelines is to implement regulatory requirements relating to Medicare and Medicaid managed care organizations' operation and performance in the areas of quality measurement and improvement,

delivery of health care, and enrollee services. For Medicare, the QISMC document is equivalent to a program manual. For Medicaid, the standards and guidelines are tools for States to use at their discretion in ensuring the quality of managed care organizations with Medicaid contracts. These standards parallel many of the Balanced Budget Act of 1997 quality assurance provisions. *Frequency:*. Annual; *Affected Public:* Business or other for-profit; *Number of Respondents:* 952; *Total Annual Responses:* 952; *Total Annual Hours Requested:* 1 hour.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Peer Review Evaluation of Access to and Quality of Home Oxygen Equipment; *Form No.:* HCFA–R–0275 (OMB# 0938–new); *Use:* The Balanced Budget Act (BBA) of 1997 reduced payment allowances for home oxygen by 25 percent effective January 1, 1998 and an additional five percent effective January 1, 1999. As a result of these fee schedule reductions, the BBA requires a study be made of issues relating to home oxygen equipment. The study's primary objectives are: to evaluate any changes in access to, and quality of, home oxygen equipment provided to Medicare beneficiaries as a result of the fee schedule reduction; and describe current physician practices in ordering and prescribing home oxygen services.; *Frequency:* One time only; *Affected Public:* Individuals or households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 2,500; *Total Annual Responses:* 2,500; *Total Annual Hours:* 787.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 10, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15421 Filed 6–16–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Committee on Nurse Education and Practice

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. Copies may be obtained from: Elaine Cohen, Executive Secretary, National Advisory Committee on Nurse Education and Practice, Room 9–35, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Dated: June 9, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–15403 Filed 6–16–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Evaluation of Transgenic Rodent Models.

Date: June 16, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15457 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Special Emphasis Panel, Early indicators of later work levels, disease and death.

Date: June 14–15, 1999.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Paul Lenz, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

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: National Institute on Aging Special Emphasis Panel, B-Vitamin Atherosclerosis Intervention Trial.

Date: July 1, 1999.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Nekola, Chief, Scientific Review Office, National Institute on Aging, National Institutes of Health, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15459 Filed 6–17–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 clearing unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB 4 01.

Date: June 24–25, 1999.

Time: June 24, 1999, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 1300 Concourse Drive, Linthicum, MD 21090.

Contact Person: William E. Elzinga, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee, DDK–C.

Date: July 14–15, 1999.

Time: 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15460 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee, DDK–C.

Date: July 14–15, 1999.

Time: 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

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. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15462 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Role of the Scavenger Receptor Type B1 in HDL Metabolism.

Date: June 28–29, 1999.

Time: June 28, 1999, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites, 2601 Richmond Road, Lexington, KY 40509.

Contact Person: James P. Harwood, Deputy Chief, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666..

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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 11, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15463 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee.

Date: June 24–25, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Norman Chang, Scientific Review Administrator, National Institutes of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

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. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15464 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15, 1999.

Time: 8:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

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: June 16–18, 1999.

Time: 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: Nautilus Motor Inn, 539 Woods Hole Road (Box 147), Woods Hole, MA 02543–0147.

Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

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: June 11, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15458 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientifica Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552(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: June 14, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Camilla E. Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov.

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: June 16, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Shirley Hilden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

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: June 17–18, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jay Joshi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–RPHB–3(1).

Date: June 23–24, 1999.

Time: 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, 301–435–0682.

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: Oncological Sciences Initial Review Group, Metabolic Pathology Study Section.

Date: June 23–25, 1999.

Time: 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Marcelina B. Powers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

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: June 23–24, 1999.

Time: 8:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Nabeeh Mourad, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

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: June 23–25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, N.W., Washington, DC 20008.

Contact Person: David L. Simpson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

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: Immunological Sciences Initial Review Group, Immunobiology Study Section.

Date: June 23–24, 1999.

Time: 9:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Betty Hayden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 23, 1999.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

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: June 23, 1999.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Joanne T. Fujii, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

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, MDCN–2.

Date: June 24–25, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Carole Jelsema, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1248.

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: Endocrinology and Reproductive Sciences Initial Review Group, Biochemical Endocrinology Study Section.

Date: June 24, 1999.

Time: 8:00 AM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

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: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 3.

Date: June 24–25, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Fess Parker's Double Tree Hotel, 633 East Cabrillo Blvd., Santa Barbara, CA 93103.

Contact Person: Christine Melchior, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

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: Infectious Diseases and Microbiology Initial Review Group, Virology Study Section.

Date: June 24–25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rita Anand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 1.

Date: June 24–25, 1999.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

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: Biophysical and Chemical Sciences Initial Review Group, Metallobiochemistry Study Section.

Date: June 24–25, 1999.

Time: 8:30 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

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: Biophysical and Chemical Sciences Initial Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: June 24–25, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815,

Contact Person: Mike Radtke, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, radtkem@csr.nih.gov.

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: June 24–25, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20817–7844, (301) 435–1245, richard.marcus@nih.gov.

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: June 24, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Garrett V. Keefer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

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, VISA.

Date: June 25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

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, 93.206, 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 94.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: June 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–15461 Filed 6–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June.

A summary of the meetings may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3),(4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 21, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: June 21, 1999, 8:30 a.m.—adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 23, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: June 23, 1999, 8:30 a.m.—adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 28, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: June 28, 1999, 8:30 a.m.–adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Dated: June 7, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–15402 Filed 6–16–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

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.*):

Applicant: Alligator Adventure, North Myrtle Beach, SC, PRT–010961

The applicant requests a permit to import one captive-bred saltwater crocodile (*Crocodylus porosus*) from Samutprakan Crocodile Farm and Zoo

Co., Ltd., Sumutprakan, Thailand for the purpose of enhancement of the species through education.

Applicant: Duke University Primate Center, NC, PRT–006845

The applicant requests a permit to re-export thirty blood samples at 4ml each sample and twelve tissue samples of mongoose lemur (*Eulemur mongoz*) to Switzerland for the purpose of beneficial management of both wild and captive populations.

Applicant: Kerri A. McCoy, Birmingham, AL, PRT–011869

The applicant requests a permit to export six captive-born scarlet chested parakeets (*Neophema splendida*) to Canada for the purpose of enhancement of the species through captive propagation.

Applicant: Angel A. Rodriguez, Corinth, MS, PRT–012820

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: The Dallas World Aquarium Corporation, Dallas, TX, PRT–013173

The applicant requests a permit to import two red-billed curassows (*Crax blumenbachii*) for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

Applicant: Richard B. Nilsen, Ft. Lauderdale, FL, PRT–013054

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Phares W. Fry, Auburn, PA, PRT–013056

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, 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, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358–2281).

Dated: June 11, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–15398 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry activities have been issued to the following companies:

Company	Activity	Date issued
Western Geophysical	Exploration (seismic)	May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosa Meehan or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammal Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3800.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rule and Regulations ''Marine Mammals; Incidental Take During Specified Activities'' (64 FR 4328) January 28, 1999.

Dated: May 28, 1999.

Gary Edwards,

Acting Regional Director.

[FR Doc. 99–15210 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal To Develop a ''Standard for a Universal Grid Reference System for Spatial Addressing''

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a ''Standard for a Universal Grid Reference System for Spatial Addressing.'' If the proposal is approved, the standard will be developed following the FGDC standards development and approval process and will be considered for adoption by the FGDC.

In its assigned federal leadership role in the development of the National Spatial Data Infrastructure (NSDI), the Committee recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is

to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before August 15, 1999.

CONTACT AND ADDRESSES: Comments may be submitted via Internet or by submitting electronic copy on diskette. Send comments via Internet to: gdc-ugrs@www.usgs.gov.

A soft copy version on 3.5-inch diskette in WordPerfect, Microsoft Word, or Rich Text Format (preferred) format and one copy of a hardcopy version may be sent to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the ''Standard for a Universal Grid Reference System for Spatial Addressing.''

Project Title

Standard for a Universal Grid Reference System for Spatial Addressing.

Date of Proposal

May 24, 1999.

Type of Standard

A data presentation standard specifying the representation of two-dimensional spatial addresses.

Submitting Organization

The Public X–Y Mapping Project, 8013 Hatteras Lane, Grid: 18SUH06949701 (NAD 83), Springfield, VA 22151.

Point of Contact: N.G. ''Tom'' Terry, Jr., The Public X–Y Mapping Project, E-mail: neri@erols.com, Pager: 703–457–0451.

Objectives

The objectives of this standard are to provide the community with:

1. A presentation format to enable the use of large-scale paper and digital maps with Global Positioning System (GPS). Persons using different commercial brands or types of maps will be able to communicate with each other because they will all use the same grid reference system.

2. An unambiguous, geodetically referenced, and mathematically uniform system for a two-dimensional address to supplement conventional street addresses. It will also serve as a spatial address away from the road network.

3. A single system which can be taught to all citizens in the school system, and which can be used in any community across the nation.

4. A system that is seamless at political boundaries and can be uniformly truncated at various levels of precision.

5. A basis for building a street and feature index database referenced to the UGRS which can be accessed and used by any member of the community.

Scope

This standard will define a Universal Grid Reference System (UGRS) for use in spatial addressing type applications. It is intended to serve as a preferred system that is easier to use than latitude and longitude by the average citizen. It is intended for use in mapping at scales from approximately 1:5,000 to 1:1,000,000. Technically, it will be the same as the Military Grid Reference System (MGRS), taking advantage of that public domain system's use of the Universal Transverse Mercator (UTM) grid and truncation and variable precision features. The standard will address other issues pertinent to civil mapping, such as recommended grid spacing.

This standard is not intended to change how coordinates are stored in computers. It is not intended to replace the use of latitude and longitude on nautical and aeronautical charts or on maps at scales smaller than approximately 1:1,000,000. It is not intended to replace the State Plane Coordinate System (SPCS). SPCS will continue to be used where jurisdictions prefer it for property descriptions, mapping at scales larger than 1:5,000, or other more technical uses such as manual surveying.

Justification/Benefits

Today Americans have many sources of geographic information to support their day-to-day activities. Commercial street and highway maps are a major source of this information for the community. These commercial products typically carry a system of proprietary zone grids, unique to a particular map or map brand. Zone coordinates consist of an alphanumeric code that locates places within a cell of a given spatial extent.

A Community may have a variety of large-scale maps available that use disparate coordinate systems. In a sample of the Washington, DC area conducted this year, four years after the Global Positioning System (GPS) reached full operational capability, 25 different large-scale street maps were found to be commercially available, and on these maps, there existed 21 different coordinate systems. Of these grids, none worked with readily available, low-cost consumer GPS receivers. Some commercial mapmakers claim their maps (and zone grids) are the de facto standard in some communities, because in some cases, local governments have adopted one of these proprietary zone grids for use as a spatial address system.

Often organizations with a local focus have not recognized problems inherent in the use of disparate grid systems or the need for preferred system that is national in scope. Consumers and businesses that must routinely cross interstate and local government boundaries require a solution national in scope. In an emergency scenario where time is precious and understanding communicated locations or positions in a non-conflicting manner is critical, it is operationally best for all to use a standard reference systems. When a local government accepts the use of a proprietary coordinate system as a ''de facto'' standard, it grants a monopolistic license to a specific commercial map vendor, thereby inhibiting competition in that community's marketplace. The UGRS will provide commercial map vendors who choose to adopt it a preferred coordinate system that enhances their products by enabling the exchange of spatial address information.

Addressing Schemes

Americans have traditionally used postal or street addresses to locate a destination in their day-to-day activities. In 30 of the 50 States, the Public Land Survey System (PLSS) is another system often used to describe a piece of property. Traditional addressing schemes have served well, and will continue to be used. Nonetheless, these systems are flawed by their lack of mathematical uniformity. Additionally, they often lack the ability to provide an address for any point in the nation.

These different systems do not work with GPS, or are unreliable for work with GPS and digital maps. With the advent of GPS, the average citizen can purchase access to a $10 billion source of precise positioning information for the price of a good watch. In the near future, vehicles will routinely come equipped with GPS driven digital maps. Mobile wireless communications have become pervasive, allowing community members to cheaply communicate with one another from any point on he globe. When people communicate, one of the fundamental pieces of information they need to exchange is location. In view of these technological advances, there

exists a need to support the community in its use and communications of geospatial information with a preferred spatial address system.

Computer Translation Versus a Preferred System

Some have suggested that because high-speed digital computes can easily translate between mathematically uniform transformations, there is no need for a preferred system for spatial addressing. They contend that computer systems will simply translate a provide coordinate value from any one of an infinite number of coordinate systems used by the community into one the operator can understand or use. In the real world, this is a flawed concept. First, it will be some time before every citizen has a lap/palm top computer to use for routine navigation. Secondly, it will not be possible to keep every citizen's computer updated with the infinite number of coordinate systems that can be produced. It is analogous to cartographic anarchy, where there are no recognized conventions.

Some say the day of the paper map is over, but we have not achieved the ''paperless environment.'' Paper will continue to be a critical medium for portraying and using geospatial information. While digital systems information such as GPS. the Internet, and print on demand paper maps will increase the ability of the community to *use* geospatial data, paper maps will continue in widespread use. Maps required a common coordinate system if people are to exchange useful positioning information. A *preferred* spatial addressing convention is required just as a preferred set of street names is used for street addresses. Street addresses simply would not be useable if there were multiple names for each street. Accordingly, a preferred convention is necessary if the community is to have a useable and workable spatial address system.

Truncation and Variable Precision

The Universal Transverse Mercator (UTM) system most closely meets URGR requirements and is:

- A plane coordinate system, which is far easier to use than latitude and longitude for large-scale work.
- A geodetically referenced, mathematically uniform system in the public domain.
- National and international in scope.

However, UTM does not provide a convention for truncating coordinate values, nor does it allow for variations in precision of information. For example, although the UGRS will support 1-meter precision, many users do not need spatial resolutions finer than 10 meters for location and navigation and do not require that coordinates be shown to all the decimal places to which they are stored in computers. In fact, users find it easier to remember fewer digits. This is analogous to memorizing and recalling telephone numbers.

The Military Grid Reference System (MGRS) is a mature, widely used, off-the-shelf system based on the UTM that also provides a method to truncate coordinates and offers various levels of precision. It is proposed that the UGRS use this existing technical standard.

Development Approach

This standards development effort will make use of existing standards and specifications to the greatest possible extent. The MGRS meets the basic requirements for a UGRS. The Public X–Y Mapping Project has nearly completed a draft of the proposed UGRS that will be presented to the FGDC as a starting point for development of this standard. It is proposed that the FGDC form an ad hoc working group or subgroup of the Standards Working Group to review The Public X–Y Mapping Project Draft and prepare it for public review. The need for a more permanent group will be reevaluated based on initial public comment.

Implementation and acceptance of a preferred spatial addressing standard will require demonstration of the usefulness of the standard. Therefore, there is a need to plan and carry out demonstration projects once the technical specification has stabilized.

Development and Completion Schedule

Completion of initial draft: August 1999.

Public Review: September–November 1999.

Final Draft: TBD—dependent on public comment—December 1999.

Demonstration Projects: 2000–2003.

Resources Required

A working draft of the UGRS will be provided by The Public X–Y Mapping Project. No new resources are needed to prepare the working draft. An ad hoc working group of the Standards Working Group will be needed to assist The Public X–Y Mapping Project in preparing the draft for public review according to FGDC directives. The Public X–Y Mapping Project expects this group to assist in the adjudication and resolution of comments received during the public review.

Administrative and financial resources will be required from FGDC members and outside organizations to carry out the demonstration projects.

Potential Participants

- Major Federal land map producers.
- Commercial map producers.
- The GPS industry.
- Representatives of map users such as E–911 service providers (see examples).

Related Standards

- This proposal relates to ANSI X3.61–1986, Representation of Geographic Point Locations for Information Interchange, which standardizes representation of UTM coordinates for computer representation, since the proposed UGRS is based upon the UTM.
- ISO 15046–16, Positioning Services, provides an interface for real-time GPS receiver output (and output from other positioning technologies). The UGRS standards project should follow the progress of ISO/TC 211 Work Item 16 and harmonize with the requirements of ISO 15046–16.
- ISO 15046–11, Spatial Referencing by Coordinates, provides a conceptual schema for the description of coordinate reference systems. The UGRS standards project should follow the progress of ISO/TC 211 Work Item 11 and harmonize with the requirements of ISO 15046–11.
- It is not clear how this proposal relates to the linear referencing standard being proposed by the Intelligent Transportation community in the U.S. and the U.S. representatives to ISO/TC 204, the international road informatics standards committee. This will be investigated during the preparation of the public review draft.
- This proposal may be related to the NSDI Framework Transportation Identification Standard being developed by the FGDC Ground Transportation Subcommittee. Overlaps will be investigated during the preparation of the public review draft.
- The UGRS standard will drawn NIMA Technical Manual (TM) 8358.1, Datums, Ellipsoids, Grids, and Grid Reference Systems, which describes the basic principles of the Military Grid Reference System

Other Targeted Authorization Bodies

If it is determined that this standard could benefit from or would require changes to ANSI X3.61, then NCITS L1 (custodian of ANSI X3.61) would be another target organization.

Although initially targeted for adoption in this country, the UGRS could be applied worldwide. If this is determined to be desirable, ISO/TC 211

would the appropriate standards body to consider it.

Addendum—Example Applications of the UGRS

UGRS is intended to be preferred method for designating point positions for numerous activities, particularly vehicle/land navigation. It will supplement conventional street addresses in the community and will provide a virtual address for any point away from the road network.

1 Enhanced 9–1–1

The spatial address (in the form of UGRS coordinates) will appear along with the caller's street address on the screen of 9–1–1 system operators in Public Safety Access Points (PSAP). The UGRS address can be used by officers on the street, who may be equipped with either paper or digital maps.

2 Disaster Relief Operations

In the aftermath of Hurricane Andrew, the devastation was so great, that street signs were blown away, making it difficult for outside agencies to navigate to places in need of assistance. UGRS will provide a nationally uniform method for describing a position that will allow outside assistance providers to ''hit the ground running'' with GPS equipment and to make use of commercial street maps that may be readily available.

3 Search and Rescue (SAR)

The advent of technologies such as medical evacuation helicopters and wireless communications (i.e. radios, cellular phones) has increased the need to precisely and unambiguously identify places away from the road network. For example, medical evacuation helicopter crews have cited difficulties (while often flying in dangerous environments, i.e. mountainous terrain at night) in understanding SAR team descriptions of where they are supposed to fly. A preferred spatial address system would eliminate this communication interoperability problem.

4 Digital Maps

Digital maps from sources such as CD ROMs for use on deskp/lap top computers and Internet information vendors are coming into widespread use. The UGRS has greater suitability for these digital mapping systems than conventional street addresses because it affords greater accuracy and ensures confidence that the point indicated is the correct location. Today, it is possible to quickly access a source of maps on the Internet. With a UGRS spatial address, the user precisely designates the point of interest by entering the address as if it were a phone number (This has important implications for future cellular phone operations and GPS/car navigation systems). The information provider can quickly respond with a map of that location. The UGRS also provides a coordinate system that can be portrayed on these maps when they are printed (''print on demand''), thereby ensuring a geodetic reference for later use of the map with GPS when driving to the location.

5 Locating Small Business Features

Quite often, it is necessary to locate a small feature such as an Automated Teller Machine (ATM), the drop off box for a package delivery service such as FedEx or United Parcel Service (UPS), or post office box. Today, automated sources of information provided by the Internet or by telephone indicate the location of the closest ATM or drop-off box, but finding these small features can prove to be a difficult task. UGRS spatial addressing will greatly ease a customer's task by unambiguously communicating a point position of higher resolution than possible with conventional street addresses and will maximize current and future capabilities of GPS.

6 Locating a Street Address Number

Locating a street address number of buildings or homes can be a difficult task that greatly adds to the workload of a vehicle deliver. This is especially true at night during heavy traffic. Many times a driver is confounded that street address numbers are small, poorly placed, or missing altogether. A virtual address defined by UGRS enables the use of GPS or a map with a UGRS grid and greatly eases the workload of a driver trying to located a specific and precise location.

7 Identifying Multiple Businesses Locations

A business with multiple locations in a community can add the spatial address for its establishments in telephone or Internet directories (or other sources of information). This information, coupled with commercial street maps that portray the UGRS grid, will allow potential customers to quickly determine which establishment is closet to them. Customers will easily see the relative location of each store.

8 Outdoors Recreation

A great deal of outdoors recreation, such as backpacking, kayaking, hunting, fishing rock climbing, cross-country skiing, snowmobiling, mountain-biking, and horseback riding, takes place away from the road network and the conventional street address system. The widespread availability of low cost wireless communications (i.e. cellular telephones, Family Radio Service [FRS] transceivers, etc.) has increased the need for a spatial address system that people can use to identify their location in a simple, uniform manner without ambiguity during these activities. For example, in the event of an accident requiring medical assistance, UGRS will provide a standard method for communicating unambiguous location of the accident to responding organizations. Likewise, backpackers and others can report their UGRS spatial address for a pickup point after a long hike, adding flexibility to their plans. The UGRS will provide a universal means for identifying the location of shelters, cabins, trail heads, springs, camping areas, parking areas, and other features in journal entries, magazine articles, guide books, and other source of recreational information. A UGRS will provide a universal coordinate system and grid for outdoor recreation maps which ensures the exchange and compatibility of spatial address information across many different sources to include the use of GPS.

9 Agriculture

There is a need in agriculture to uniformly identify particular parcels of land for various work tasks. For example, a farmer communicating with a mechanic by celluar phone may need to clearly identify in which field a tractor has broken down. Another example is where the farmer has to instruct a deliverer of some commodity about where to stage the material.

10 Tourism

The tourist is one who is new to an area and unfamiliar with its features, but is looking for specific places of interest. A preferred spatial address for a place of interest will be found on brochures and in other others of tourism information to enable tourists to quickly and unambiguously locate a place of interest.

Dated: June 4, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–15420 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–963–1020–04–WEED]

Notice of Proposed Supplementary Rules To Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules to require the use of certified noxious weed-free forage on Bureau of Land Management-administered lands in North Dakota.

SUMMARY: The Field Manager of the Bureau of Land Management (BLM) in North Dakota is proposing a requirement that public land users, including permittees, and local, state, or federal government agents conducting administrative activities, use certified noxious weed-free hay, straw, cubes, grains, or mulch when visiting BLM administered lands in North Dakota. This requirement will affect those who use the above-named products on BLM administered lands in North Dakota such as: recreationists using pack and saddle stock, and contractors who use straw or other mulch for reseeding purposes. These individuals or groups would be required to use certified noxious weed-free forage products, or other approved products such as pelletized feed while on BLM administered lands in North Dakota.

DATES: Comments concerning the proposal should be received on or before July 19, 1999.

ADDRESSES: Send written comments concerning the North Dakota requirement to: Field Manager, BLM, 2933 3rd Ave. W., Dickinson, ND 58601–2619.

FOR FURTHER INFORMATION CONTACT: BLM—North Dakota Field Office, Don Rufledt, Natural Resource Specialist, 2933 3rd Ave. W., Dickinson, ND 58601–2619, or telephone (701) 225–9148.

SUPPLEMENTARY INFORMATION: Noxious weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the west include 2,300 acres per day on BLM public lands and 4,600 acres per day on all federally-administered land. Species such as leafy spurge, Canada thistle, spotted knapweed, musk thistle, purple loosestrife, and many others are alien to the United States and, at least initially, have no natural enemies to keep their populations in balance. Consequently, these weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and damage wildlife habitat. Widespread infestations can lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions reduce livestock and wildlife grazing capacity, occasionally affect the health of public land users by aggravating allergies and other ailments, and threaten federally protected or native plants and animals.

To curb the spread of noxious weeds, a growing number of western states have jointly developed noxious weed-free forage certification standards, and, in cooperation with various federal, state, and county agencies, passed weed management laws. Because hay and other forage products containing noxious weed seeds are part of the infestation problem, North Dakota has developed a program to certify weed-free forage. The state encourages forage producers to grow noxious weed-free products and have them certified.

Region One of the United States Forest Service, Department of Agriculture, implemented a similar policy for the National Grasslands in North Dakota in 1998. This proposal will provide a standard regulation for all users of BLM lands in North Dakota and will provide for coordinated management with National Forest Grasslands across jurisdictional lines.

In cooperation with the state of North Dakota and the U.S. Forest Service, the BLM is proposing—for all BLM administered lands within North Dakota—a ban on hay, straw, cubes, grains, or mulch that has not been certified. This proposal will ensure that: (1) this ban is well publicized and understood. The BLM would stress education and awareness in 1999 and 2000 and move to implement enforcement in 2001; and (2) BLM visitors and land users will know where they can purchase state-certified hay or other products.

The principal author of these proposed supplementary rules is Don Rufledt, Natural Resource Specialist, of the North Dakota Field Office, BLM.

For the reasons stated above, under the authority of 43 CFR 8365.1–6, the North Dakota Field Office, BLM, proposes supplementary rules to read as follow:

Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in North Dakota:

(1) To help prevent the spread of weeds on BLM-administered lands in North Dakota, effective September 1, 1999, all such lands shall be closed to possessing, transporting or storing hay, straw, cubes, grains, or mulch that has not been certified as free of noxious weed seed. Pelletized feed does not require certification.

(2) Certification will comply with North Dakota's Pilot Weed Free Forage Program. North Dakota's pilot program will certify forage as free of only those noxious weeds listed in North Dakota. Forage from other states should be free of all regionally listed noxious weeds.

(3) The following persons are exempt from this order: (a) anyone with a permit signed by BLM's authorized officer at the North Dakota Field Office specifically authorizing the prohibited act or omission on BLM-administered public lands within the state; (b) persons transporting forage products on federal and state highways and county roads that are not BLM-development roads or trails.

(4) Any person who knowingly and willfully violates the provisions of these supplemental rules may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code § 1733(a).

Dated: June 4, 1999.

Douglas J. Burger,

Field Manager, Bureau of Land Management, North Dakota.

[FR Doc. 99–15361 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–01); (NMNM 89815)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 89815 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1998, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e)

of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: June 10, 1999.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 99–15417 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–952–09–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted June 2, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tps. 1, 2, 3, and 4 N., Rs. 21, 22, 23, and 24 W.

The plat, representing the Amended Protraction Diagram 15 Index of unsurveyed Townships 1, 2, 3, and 4 North, Ranges 21, 22, 23, and 24 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 1 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 1 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 1 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 1 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 1 N., R. 24 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 1 North, Range 24 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 2 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 2 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 2 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 2 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 3 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 3 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 3 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 3 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 4 N., R. 21 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 4 North, Range 21 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 4 N., R. 22 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 4 North, Range 22 West, Principal Meridian, Montana, was accepted June 2, 1999.

T. 4 N., R. 23 W.

The plat, representing Amended Protraction Diagram 15 of unsurveyed Township 4 North, Range 23 West, Principal Meridian, Montana, was accepted June 2, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted June 2, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted June 2, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests. These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: June 9, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–15429 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Proposed Audit Delegation for the State of Alaska

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposal.

SUMMARY: The State of Alaska (State) is requesting a delegation of audit and investigation authority from the Minerals Management Service (MMS). This Notice gives members of the public an opportunity to review and comment on the State's proposal.

DATES: Submit written comments on or before July 19, 1999.

ADDRESSES: Mr. Mark Peterson, State and Indian Compliance Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3660, Denver, CO 80225–0165, telephone number (303) 275–7465, fax number (303) 275–7470, e-mail: mark.peterson@mms.gov; or Mr. Matt Rader, Division of Oil and Gas, Department of Natural Resources, State of Alaska, 550 West 7th Avenue, Suite 800, Anchorage, Alaska 99501–3510, telephone number (907) 269–8776, fax number (907) 269–8938, e-mail: matt__rader@dnr.state.ak.us.

SUPPLEMENTARY INFORMATION: Public comments should be submitted to Mr. Mark Peterson, at the address listed in the **ADDRESSES** section.

The State's proposal was received by MMS on May 7, 1999. In accordance with 30 CFR Section 227.101(a)(1) (1998) (30 U.S.C. 1735; 30 U.S.C. 196; Pub. L. 102–154), the State requests that MMS delegate the royalty management functions of conducting audits and investigations. The State requests delegation of these functions for producing Federal oil and gas leases within the State, producing Federal oil and gas leases in the Outer Continental Shelf subject to revenue sharing under 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g), and for other producing solid mineral or geothermal Federal leases within the State. The State does not request delegation of royalty and production reporting functions.

The State requests 100 percent funding of the delegated functions for a 3-year period beginning October 1, 1999, with the option to extend for an additional 3-year period. The State had a previous 205 audit delegation agreement with MMS from January 18, 1985, through September 30, 1987. Therefore, MMS has determined a formal hearing for comments will not be

held under 30 CFR Section 227.105. This Notice serves as the public's opportunity for review and comment on the State's proposal.

The State's proposal can be viewed and printed from the Internet at: http://www.rmp.mms.gov/library/readroom/pubcomm/RMPPubRdg.htm.

A paper copy can be obtained by contacting Mr. Mark Peterson at the address listed above.

Dated: June 11, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–15443 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official Corps of Discovery II Medal

SUMMARY: This notice establishes the official National Park Service symbol with the incorporating words ''Corps of Discovery II: 200 Years to the Future'' commemorating the Bicentennial Anniversary of the Lewis and Clark Expedition.

DATES: This action is effective June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Engler, Interim Superintendent, Corps of Discovery II: 200 Years to the Future, Route 3, Box 47, Beatrice, Nebraska 68310, telephone 402–223–3514.

SUPPLEMENTARY INFORMATION: The National Park Service has designated an official National Park Service symbol with the words ''Corps of Discovery II: 200 Years to the Future'' in honor of the Lewis and Clark Expedition Bicentennial Anniversary, 2003–2006. You may obtain a copy of the image incorporating the words ''Corps of Discovery II: 200 Years to the Future'' from the Interim Superintendent at the address listed above. Notice is given that whoever manufactures, sells, or possesses this symbol embossed image, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving photograph or print, or impression in the likeness of this symbol, or any colorable imitation thereof, without authorization from the United States Department of the Interior is subject to the penalty provisions of Section 701, Title 18 of the United States Code.

Dated: June 4, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 99–15223 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR Part 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. This information collection was previously approved and assigned clearance number 1029–0034. This notice describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approved or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 19, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for 30 CFR Part 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. OSM is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is listed in 30 CFR Part 778, which is 1029–0034.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on January 13, 1999 (64 FR 2231). This notice gave the public 60 days in which to comment on the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the burden of respondents.

OSM received one comment from an industry group. Although afforded the opportunity, this commenter did not provide any substantive suggestions regarding the need for the collection, accuracy of the estimated burden, or methods to improve the collection. However, the commenter did state that OMB should disapprove the information collection request. OSM published an Interim Final rule on April 21, 1997 (62 FR 19540), which altered regulatory language at 30 CFR Part 778. The commenter stated that, since OSM did not prepare an information collection package with a notice and comment period ''OMB should disapprove the ICs [information collections] contained in the IFR (interim final rule], until such time as OSM publishes the ICs in the **Federal Register** for public comment, as required by the Paperwork Reduction Act (PRA] and OMB regulations.''

When it promulgated the IFR on April 21, 1997, OSM explained that the IFR ''does not contain collections of information which require approval by [OMB] under [the PRA]. OMB has previously approved the collection activities and assigned clearance numbers. * * *'' 62 FR 19450, 19457, 19459 (April 21, 1997). OSM based this statement on the good faith belief that, for PRA purposes, the collections of information contained in the IFR do not represent ''material or substantive'' modifications to the currently approved collections of information which were associated with the prior ownership and control rules, and therefore, did not require notice and comment from the public, nor OMB approval. (Importantly, the IFR impose no new information requirements on permit applicant's rather, the IFR actually pose less of a burden to applicants, as they require submission of slightly less, though largely the same, information as the prior permit information rule. Indeed, *all* of the information called for in Part

778 of the IFR was covered by the currently valid OMB control number associated with the prior rule.)

Even if the IFR's collections of information were material or substantive, OSM's current renewal effort relative to 30 CFR Part 778 will cure any procedural or technical defects by affording the respondent pool with the same notice and opportunity to comment that would have been provided had OSM submitted the IFR to the PRA's notice and comment procedures; the notice and comment provisions for renews are substantially identical to the provisions for collections for information contained in an interim final rule. 5 CFR 1320.10, 120.12. Furthermore, this renewal package reflects all changes in the IFR from the prior permit information rule, so the respondents will have a full and fair opportunity to comment on the collections of information embodied in the IFR. OSM believes that the collections of information contained in the IFR should in any case remain valid pending OMB's review of the approval package.

As required by the PRA, OSM will seek an additional 30-day comment period regarding this information collection activity upon OSM submission of this clearance request to OMB for review. All interested parties will have another opportunity in which to submit substantive comments on the following information collection activity:

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information—30 CFR 778.

OMB Control Number: 1029–0034.

Summary: Section 507(b) of P.L. 95–87 provides persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 420.

Total Annual Burden Hours: 16,261.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1029–0034 in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240.

Dated: June 14, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–15400 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–811 (Final)]

Drams of One Megabit and Above From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–811 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Taiwan of dynamic random access memory semiconductors (DRAMs) of one megabit and above, provided for in subheadings 8542.13.80 and 8473.30.10 through 8473.30.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 28, 1999.

[1] Uncased and cased DRAMs are provided for in subheading 8542.13.80, while DRAM modules are provided for in subheadings 8473.30.10 through 8473.30.90. For Department of Commerce scope language, see 64 FR 28983, May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of DRAMs from Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 22, 1998, by Micron Technology, Inc., Boise, Idaho.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested

parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 5, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 19, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 8, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 14, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and § 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is October 13, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 26, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 26, 1999. On November 10, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 15, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, § 207.3, and § 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and § 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15439 Filed 6–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–422]

Notice of Investigation

In the Matter of: Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 12, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Moen Incorporated of North Olmsted, Ohio. A supplement to the complaint was filed on May 27, 1999. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain two-handle centerset faucets and escutcheons and components thereof by reason of infringement of U.S. Patent Des. 347,466. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 11, 1999, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain two-handle centerset faucets and escutcheons and components thereof by reason of infringement of U.S. Patent Des. 347,466, and whether an industry in the

United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Moen Incorporated, 25300 Al Moen Drive, North Olmsted, Ohio 44070.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Foremost International Trading, Inc., 906 Murray Road, East Hanover, NJ. 07936

Hometek International Group, 1755 Park Street, Suite 350, Naperville, Illinois 60563.

Sisco, Inc., 2945 E. Maria Street, Rancho Dominguez, California 90221

Chung Cheng Faucet Co. Ltd., 69 Lane 22 Chang Tin Road, Ting Fan Li, Lu Kang Chang Hua, Hsien, Taiwan

Lota International Co. Ltd., 10/F1 Xiamen Special Economic Zone, Trade Center North Hubin Road, Xiamen, People's Republic of China

(c) Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: June 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15440 Filed 6–16–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Bell Atlantic Corporation et al; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment has been filed with the United States District Court for the District of Columbia in *United States of America* v. *Bell Atlantic Corporation et al.*, Civil Action 99–1119 (LFO). On May 7, 1999, the United States filed a Compliant alleging that the proposed acquisition of GTE Corporation by Bell Atlantic Corporation would lessen competition in the markets for wireless mobile telephone services in 10 major trading areas, and 65 metropolitan statistical areas and rural service areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires defendants to divest one of their two wireless telephone businesses in each market where these businesses overlap geographically. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, 1401 H Street, NW, Room 8000, Washington, DC 20530 (telephone: (202) 514–5621).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Bell Atlantic Corporation and GTE Corporation, Defendants.

[Civil No.: 1:99CV01119; Filed: 5/7/99]

Judge Louis F. Oberdorfer

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this

Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 7, 1999.

For Plaintiff United States of America:

Joel I. Klein,

Assistant Attorney General.

Donald J. Russell,

Chief, Telecommunications Task Force.

A. Douglas Melamed,

Principal Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Laury Bobbish,

Assistant Chief, Telecommunications Task Force.

Hillary B. Burchuk, D.C. Bar No. 366755,

Lawrence M. Frankel, D.C. Bar No. 441532,

J. Philip Sauntry, Jr., D.C. Bar No. 142828.

Attorneys, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5621.

Date Signed: May 6, 1999.

For Bell Atlantic Corporation:

John Thorne, D.C. Bar No. 421351

Bell Atlantic Corporation, 1320 North Courthouse Road, Eighth Floor, Arlington, Virginia 22201, (703) 974–1600.

Date Signed: May 6, 1999.

For GTE Corporation:

Steven G. Bradbury, D.C. Bar No. 416430

Kirkland & Ellis, 655 15th Street, NW., Washington, DC 20005, (202) 879–5000.

Date Signed: May 6, 1999.

Stipulation Approved For Filing

Done this ____ day of _____, 1999

_____

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Bell Atlantic Corporation and GTE Corporation, Defendants.

[Civil No.: 1:99CV01119; Filed: 5/7/99]

Judge Louis F. Oberdorfer

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on May 7, 1999;

And Whereas, plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication on any issue of fact or law;

And Whereas, entry of this Final Judgment does not constitute any evidence against or an admission by any party with respect to any issue of law or fact;

And Whereas, defendants have further consented to be bound by the provisions of the Final Judgment pending its approval by the Court;

And Whereas, plaintiff the United States believes that entry of this Final Judgment is necessary to protect competition in markets for mobile wireless telecommunications services in Alabama, Florida, Illinois, Indiana, New Mexico, South Carolina, Texas, Virginia and Wisconsin;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of certain wireless businesses that would otherwise be commonly owned and in many cases controlled, including their licenses and all relevant assets of the wireless businesses, and the imposition of related injunctive relief to ensure that competition is not substantially lessened;

And Whereas, plaintiff the United States requires that defendants make certain divestitures of such licenses and assets for the purpose of ensuring that competition is not substantially lessened in any relevant market for mobile wireless telecommunications services in Alabama, Florida, Illinois, Indiana, New Mexico, South Carolina, Texas, Virginia or Wisconsin;

And Whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will not raise any claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein below;

Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II Definitions

A. ''Bell Atlantic'' means Bell Atlantic Corporation, a corporation with its headquarters in New York City, New York and includes its successors and assigns, its subsidiaries and affiliates, and its directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

B. ''Bell Atlantic/GTE Merger'' means the merger of Bell Atlantic and GTE, as detailed in the Agreement and Plan of Merger entered into by Bell Atlantic and GTE on July 28, 1998.

C. ''GTE'' means GTE Corporation, a corporation with its headquarters in Irving, Texas and includes its successors and assigns, its subsidiaries and affiliates, and its directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

D. ''Overlapping Wireless Markets'' means the following Metropolitan Statistical Areas (''MSA''), Major Trading Areas (''MTA''), and Rural Service Areas (''RSA'') used to define cellular and PCS license areas by the Federal Communications Commission (''FCC''), in which, as of the date of the filing of the Complaint in this case, Bell Atlantic, by virtue of its partnership interest in PCS PrimeCo, L.P. (''PrimeCo''), held an interest in PCS businesses, and GTE held, or has plans to acquire,[1] an ownership interest in cellular businesses which serve the following MSAs and RSAs that geographically overlap with the applicable PrimeCo MTA, as indicated:

I. PCS/Cellular Overlap Areas

A. Jacksonville MTA
  1. Jacksonville MSA
  2. Florida 5–Putman RSA
B. Miami-Fort Lauderdale MTA
  1. Fort Myers MSA
  2. Florida 1—Collier (B1) RSA
  3. Florida 2—Glades (B1) RSA
  4. Florida 3—Hardee RSA
  5. Florida 11—Monroe (B2) RSA
C. Tampa-St. Petersburg-Orlando MTA
  1. Tampa-St. Petersburg MSA
  2. Lakeland-Winter Haven MSA
  3. Sarasota MTA
  4. Bradenton MSA
  5. Florida 2—Glades (B1) RSA
  6. Florida 3—Hardee RSA
  7. Florida 4—Citrus (B1) RSA
D. New Orleans-Baton Rouge MTA
  1. Mobile, AL MSA
  2. Pensacola, FL MSA
E. Chicago MTA
  1. Aurora-Elgin, IL MSA
  2. Bloomington-Normal, IL MSA
  3. Champaign-Urbana-Rantoul, IL MSA

[1] Pursuant to an April 2, 1999 purchase agreement, GTE plans to acquire the following cellular systems from Ameritech Mobile Phone Service of Illinois, Inc., and Ameritech Mobile Phone Service of Chicago, Inc.: Aurora-Elgin, IL MSA, Bloomington-Normal, IL MSA, Champaign-Urbana-Rantoul, IL MSA, Chicago, IL MSA, Decatur, IL MSA, Gary-Hammond-East Chicago, IN MSA, Joliet, IL MSA, Kankakee, IL MSA, Springfield, IL MSA, Illinois 2—Bureau (B3) RSA, Illinois 4—Adams (B1) RSA, Illinois 5—Mason (B2) RSA, Illinois 6—Montgomery RSA, Illinois 7—Vermilion RSA, and Indiana 1—Newton (B2) RSA.

4. Chicago, IL MSA
5. Decatur, IL MSA
6. Fort Wayne, IN MSA
7. Gary-Hammond-East Chicago, IN MSA
8. Joliet, IL MSA
9. Kankakee, IL MSA
10. Rockford, IL MSA
11. Springfield, IL MSA
12. Illinois 1—Jo Daviess RSA
13. Illinois 2—Bureau (b1) RSA
14. Illinois 2—Bureau (B3) RSA
15. Illinois 3—Mercer RSA
16. Illinois 4—Adams (B1) RSA
17. Illinois 5—Mason (B2) RSA
18. Illinois 6—Montgomery RSA
19. Illinois 7—Vermilion RSA
20. Indiana 1—Newton (B1) RSA
21. Indiana 1—Newton (B2) RSA
22. Indiana 3—Huntington RSA

F. Dallas-Fort Worth MTA
1. Dallas-Fort Worth MSA
2. Austin MSA
3. Sherman-Denison MSA
4. Texas 10—Navarro (B3) RSA
5. Texas 11—Cherokee (B1) RSA
6. Texas 16—Burleson RSA

G. Houston MTA
1. Houston MSA
2. Beaumont-Port Arthur MSA
3. Galveston MSA
4. Bryan-College Station MSA
5. Victoria MSA
6. Texas 10—Navarro (B3) RSA
7. Texas 11—Cherokee (B1) RSA
8. Texas 16—Burleson RSA
9. Texas 17—Newton RSA
10. Texas 20—Wilson (B2) RSA
11. Texas 21—Chambers RSA

H. San Antonio MTA
1. San Antonio MSA
2. Texas 16—Burleson RSA
3. Texas 20—Wilson (B2) RSA

I. Richmond-Norfolk MTA
1. Norfolk-Virginia Beach-Portsmouth MSA
2. Richmond MSA
3. Newport News-Hampton MSA
4. Petersburg-Colonial Heights MSA
5. Virginia 7-Buckingham (B1) RSA
6. Virginia 8-Amelia RSA
7. Virginia 9-Greensville RSA
8. Virginia 11-Madison (B1) RSA
9. Virginia 12-Caroline (B1) RSA
10. Virginia 12-Carolina (B2) RSA

J. Milwaukee MTA
1. Wisconsin 8-Vernon RSA

II. Cellular MSA Overlap Areas

A. Greenville, SC MSA
B. Anderson, SC MSA
C. El Paso, TX MSA
D. Las Cruces, NM MSA

E. ''Wireless System Assets'' means, for each wireless business to be divested under this Final Judgment, all types of assets, tangible an intangible, used by defendants in the operation of each of the wireless businesses to be divested (including the provision of long distance telecommunications services for wireless calls). ''Wireless System Assets'' shall be construed broadly to accomplish the complete divestitures of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets required by this Final Judgment and to ensure that the divested wireless businesses remain viable, ongoing businesses. With respect to each overlap in the Overlapping Wireless Markets, the Wireless System Assets to be divested shall be either those in which Bell Atlantic has an interest or those in which GTE has or will acquire an interest, but not both. These divestitures of the Wireless System Assets as defined in this Section II.E shall be accomplished by: (i) Transferring to the purchaser the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of either defendant's overall wireless business that must be retained to continue the existing operations of the wireless properties defendants are not required to divest, and that either are not capable of being divided between the divested wireless businesses and those that are not divested or are assets that the divesting defendant and the purchaser(s) agree shall not be divided); and (ii) granting to the purchaser(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period at the election of the purchaser to use any of the divesting defendant's assets used in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment, where those assets are not subject to complete transfer to the purchaser under (i). Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, inventory, office furniture, fixed assets and furnishing, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer lists, credit records, accounts, and historic and current business plans, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks (except for trademarks, trade names and service marks containing ''Airbridge,'' ''AmericaChoice,'' ''Bell Atlantic Mobile,'' ''Cellular One,'' Conversation Card,'' DigitalChoice,'' ''EasternChoice,'' ''GTE,'' ''HomeChoice,'' ''MetroMobile,'' ''Mobilnet,'' ''PCS Now,'' ''PCS Ultra,'' ''PrimeCo,'' ''Welcome to the United State of America,'' and ''WesternChoice'') or other intellectual property, including all intellectual property rights under third party licenses that are capable of being transferred to a purchaser either in their entirety, for assets described above under (i), or through a license obtained through or from the divesting defendant, for assets described above under (ii). Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Complaint in this case and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third party licenses that are used by the wireless businesses being divested but that defendants could not transfer to a purchaser entirely or by license without third party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

1. In the event that defendants elect to divest Bell Atlantic's interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHz of broadband PCS spectrum within that PCS/Cellular Overlap Area upon completion of the divestiture of the Wireless System Assets.

2. In the event that defendants elect to divest Bell Atlantic's interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants, at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE Merger, may request approval from plaintiff to partition the PCS license along basic Trading Area (''BTA'') geographic boundaries and retain assets in one or more specified non-overlapping BTAs. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be sold in the non-overlapping BTAs are not needed to assure the competitive viability of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity.

3. In a PCS/Cellular Overlap Area where GTE holds a non-controlling minority interest in an overlapping cellular business, defendants, at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE

Merger, may request approval from plaintiff to retain both the PCS business and GTE's interest in such overlapping cellular business. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition.

III. Applicability and Effect

A. The provisions of this Final Judgment shall be applicable to each of defendants, its affiliates, subsidiaries, successors, and assigns, and its directors, officers, managers, agents, employees, attorneys, and shall also be applicable to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition to an Interim Party, which shall be defined to mean any person other than a purchaser approved by plaintiff pursuant to Section IV.C, of all or substantially all of their assets, or of a lesser business unit containing the Wireless System Assets required to be divested by this Final Judgment, that the Interim Party agrees to be bound by the provisions of this Final Judgment, and shall also require that any purchaser of the Wireless System Assets agree to be bound by Section X of this Final Judgment.

IV. Divestiture of Wireless Interests

A. Defendants Bell Atlantic and GTE shall divest themselves of the Wireless System Assets in each of the Overlapping Wireless Markets, including both any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control, to a purchaser or purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of this Final Judgment, in accordance with the following schedule:

1. On or before consummation of the Bell Atlantic/GTE Merger, defendants shall divest Wireless System Assets in the Cellular MSA Overlap Areas;

2. If Bell Atlantic has acquired 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas more than ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, defendants shall divest the Wireless System Assets in the PCS/Cellular Overlap Areas on or before consummation of the Bell Atlantic/GTE Merger;

3. If Bell Atlantic has not acquired, more than ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas:

(a) defendants will submit to plaintiff, on or before consummation of the Bell Atlantic/GTE Merger, a definitive Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested;

(b) the cellular MSA and RSA businesses on the Divestiture List shall be divested within ninety (90) calendar days after consummation of the Bell Atlantic/GTE Merger; except that if Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas within the ninety (90) calendar day period prior to consummation of the Bell Atlantic/GTE Merger, the cellular MSA and RSA businesses on the Divestiture List shall be divested on or before consummation of the Bell Atlantic/GTE Merger;

(c) the PCS MTA businesses on the Divestiture List shall be divested within 90 calendar days after Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas, but in no event later than one hundred eighty (180) calendar days after consummation of the Bell Atlantic/GTE Merger.

B. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. The divestitures carried out under the terms of this decree shall also be conducted in compliance with the applicable rules of the FCC, including 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership), or any waiver of such rules or other authorization granted by the FCC. Authorization by the FCC to conduct divestiture of a cellular business in a particular manner will not modify any of the requirements of this decree.

C. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of the Final Judgment, shall be accomplished by (1) divesting all of the Wireless System Assets in any individual Overlapping Wireless Market entirely to a single purchaser (but Wireless System Assets used by GTE in the operation of its cellular business in different Overlapping Wireless Markets may be divested to different purchasers), and (2) selling or otherwise conveying the Wireless System Assets to the purchaser(s) in such a way as to satisfy plaintiff, in its sole discretion, that each wireless business can and will be used by the purchaser(s) as part of a viable, ongoing business engaged in the provision of wireless mobile telephone service. The divestitures pursuant to this Final Judgment shall be made to one or more purchasers for whom it is demonstrated to plaintiff's sole satisfaction that (1) the purchaser has the capability and intent of competing effectively in the provision of wireless mobile telephone service using the Wireless System Assets, (2) the purchaser has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets, and (3) none of the terms of any agreement between the purchaser and either of defendants shall give defendants the ability unreasonably (i) To raise the purchaser's costs, (ii) to lower the purchaser's efficiency, (iii) to limit any line of business which a purchaser may choose to pursue using the Wireless System Assets (including, but not limited to, entry into local telecommunications services on a resale of facilities basis or long distance telecommunications services on a resale or facilities basis), or otherwise to interfere with the ability of the purchaser to compete effectively.

D. If they have not already done so, defendants shall make known the availability of the Wireless System Assets in each of the Overlapping Wireless Markets by usual and customary means, sufficiently in advance of the time of consummation of the Bell Atlantic/GTE Merger reasonably to enable the required divestitures to be accomplished according to the schedule outlined herein. Defendants shall inform any person making an inquiry regarding a possible purchase of the Wireless System Assets that the sale is being made pursuant to the requirements of this Final Judgment, as well as the rules of the FCC, and shall provide such person with a copy of the Final Judgment.

E. Defendants shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, access to personnel, the ability to inspect the Wireless System Assets, and all information and any financial, operational, or other documents customarily provided as part of a due diligence process, including all

information relevant to the sale and to the areas of business in which the cellular business has been engaged or has considered entering, except documents subject to attorney-client or work product privileges, or third party intellectual property that defendants are precluded by contract from disclosing and that has been identified in a schedule pursuant to Section II.E. Defendants shall make such information available to the plaintiff at the same time that such information is made available to any other person.

F. Defendants shall not interfere with any negotiations by any purchaser to retain any employees who work or have worked since July 29, 1998 (other than solely on a temporary assignment basis from another part of Bell Atlantic or GTE) with, or whose principal responsibility relates to, the divested Wireless System Assets.

G. To the extent that the wireless businesses to be divested use intellectual property, as required to be identified by Section II.E, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall cooperate with the purchaser(s) and trustee to seek to obtain those consents.

H. Defendant shall preserve all records of all efforts made to preserve and divest any or all of the Wireless System Assets required to be divested until the termination of this Final Judgment.

V. Appointment of Trustee

A. If defendants have not divested all of the Wireless System Assets required to be divested in accordance with the schedule in Section IV to a purchaser or purchasers that have been approved by plaintiff pursuant to Section IV.C, then:

1. Defendants shall identify to plaintiff in writing the remaining Wireless System Assets to be divested in the Overlapping Wireless Markets, and this written notification shall also be provided to the trustee promptly upon his or her appointment by the Court.

2. The Court shall, on application of plaintiff, appoint a trustee selected by plaintiff, who will be responsible for (a) Accomplishing a divestiture of all Wireless System Assets transferred to the trustee from defendants, in accordance with the terms of this Final Judgment, to a purchaser or purchasers approved by plaintiff under Section IV.C, and (b) exercising the responsibilities of the licensee and controlling and operating the transferred Wireless System Assets to ensure that the wireless businesses remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the Overlapping Wireless Markets, until they are divested to a purchaser or purchasers, and the trustee shall agree to be bound by this Final Judgment;

3. Defendants shall submit a form of trust agreement (''Trust Agreement'') to plaintiff, which must be consistent with the terms of this Final Judgment and which must have received approval by plaintiff, who shall communicate to defendants within ten (10) business days approval or disapproval of that form; and

4. After obtaining any necessary approvals from the FCC for the transfer of control of the licenses of the remaining Wireless System Assets to the trustee, defendants shall irrevocably divest the remaining Wireless System Assets to the trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is be effected by creation of such an entity for sale to purchser(s)) and control such assets, subject to the terms of approved Trust Agreement.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the wireless business(es) to be divested, which shall be done within the time periods set forth in this Final Judgment. Those assets shall be the Wireless System Assets as designated by defendants as set forth in Section V.A.1 for the Overlapping Wireless Markets. In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment. Subject to Section V.C of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture and in the management of the Wireless System Assets transferred to the trustee, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by the defendants must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall sever at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the wireless business(es) sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested wireless business(es) and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the wireless business(es) to be divested, and defendants shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. As required and limited by Sections IV.E and F of this Final Judgment, defendants shall permit prospective purchaser(s) of the Wireless System Assets to have reasonable access to personnel and to make such inspection of the Wireless System Assets to be sold and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this final Judgment.

E. After being appointed and until the divestiture of the Wireless System Assets is complete, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that, to the extent such reports

contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Wireless System Assets to be sold, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all effects made to divest the Wireless System Assets.

F. The Trustee shall divest the Wireless System Assets in each of the PCS/Cellular Overlap Areas to a purchaser or purchasers acceptable to plaintiff in its sole discretion, as required in Section IV.C of this Final Judgment, no later than one hundred and eighty (180) calendar days after the Wireless Systems Assets are transferred to a trustee in accordance with the schedule outlined in Section IV; provided however, that if applications have been filed with the FCC within the one hundred eighty day period seeking approval to assign or transfer licenses to the purchaser(s) of the Wireless System Assets but approval of such applications has not been granted before the end of the one hundred eighty day period, the period shall be extended with respect to the divestiture of those Wireless System Assets for which final FCC approval has not been granted until five (5) days after such approval is received.

G. If the trustee has not accomplished the divestiture of all of the Wireless System Assets within the time specified for completion of divestiture to a purchaser or purchasers under Section V.F. of this Final Judgment, the trustee thereupon shall file promptly with this Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such order as it deems appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period agreed to by plaintiff.

H. After defendants transfer the Wireless System Assets to the trustee, and until those Wireless System Assets have been divested to a purchaser or purchasers approved by plaintiff pursuant to Section IV.C, the trustee shall have sole and complete authority to manage and operate the Wireless System Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Wireless System Assets transferred to the trustee, apart from the right to receive the proceeds of the sale or other disposition of the Wireless System Assets. The trustee shall operate the wireless business(es) as a separate and independent business entity from Bell Atlantic or GTE, with sole control over operations, marketing and sales. Bell Atlantic and GTE shall not communicate with, or attempt to influence the business decisions of, the trustee concerning the operation and management of the wireless businesses, and shall not communicate with the trustee concerning the divestiture of the Wireless System Assets or take any action to influence, interfere with, or impede the trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the trustee, if requested to do so, with whatever resources or cooperation may be required to complete the divestitures of the Wireless System Assets and to carry out the requirements of this Final Judgment. In no event shall defendants provide to, or receive from, the trustee or the wireless businesses under the trustee's control any non-public or competitively sensitive marketing, sales, or pricing information relating to their respective mobile wireless telecommunications service businesses.

VI. Notification

A. Within two (2) business days following execution of a binding agreement to effect, in whole or in part, any proposed divestiture required by this Final Judgment, whichever defendant is divesting the Wireless System Assets, or the trustee if the trustee is divesting the Wireless System Assets, shall notify plaintiff of the proposed divestiture. If the trustee is responsible for the divestiture, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who theretofore offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Wireless System Assets that are the subject of the binding agreement, together with full details of same.

B. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser(s), any other third party, or the trustee (if applicable), additional information concerning the proposed divestiture and the proposed purchaser(s) or any other potential purchaser(s). Defendants and the trustee shall furnish any such additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser(s), any third party, or the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not plaintiff objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated subject only to defendants' limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser(s) or in the event of an objection by plaintiff, a divestiture shall not be consummated. Upon objection by a defendant under the proviso of Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until all divestitures have been completed, defendants shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with this Final Judgment. With respect to the period preceding the consummation of the Bell Atlantic/GTE Merger, each such affidavit shall (i) Include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an

inquiry about acquiring, any or all of the Wireless System Assets required to be divested, (ii) describe in detail each contact with any such person during that period, and (iii) include a summary of the efforts that defendants have made to solicit a purchaser(s) for the Wireless System Assets to be divested in the Overlapping Wireless Markets pursuant to this Final Judgment and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail at actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Wireless System Assets to be divested pursuant to this Final Judgment. Defendants shall deliver to plaintiff another affidavit describing any changes to the efforts and actions outlines in defendants' earlier affidavit filed pursuant to Section VII.B of this Final Judgment within fifteen (15) calendar days after the change is implemented.

VIII. Financing

Defendants shall not finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

IX. Hold Separate Order

A. Until accomplishment of the divestitures of the Wireless System Assets to purchase(s) approved by plaintiff pursuant to Section IV.C, each defendant shall take all steps necessary to ensure that each of the wireless businesses that it owns or operates in the Overlapping Wireless Markets shall continue to be operated as a separate, independent, ongoing, economically viable and active competitor to the other mobile wireless telecommunications providers operating in the same license area; and that except as necessary to comply with this Final Judgment, the operation of said wireless businesses (including the performance of decision-making functions relating to marketing and pricing) will be kept separate and apart from, and not influenced by, the operation of the other wireless business, and the books, records, and competitively sensitive sales, marketing, and pricing information associated with said wireless businesses will be kept separate and apart from the books, records, and competitively sensitive sales, marketing, and pricing information associated with the other wireless business; provided that defendants may continue to use any trademarks, trade names or service marks used in the operation of such wireless businesses prior to the consummation of the Bell Atlantic/GTE Merger.

B. Until the Wireless System Assets in each Overlapping Wireless Market have been divested to purchaser(s) approved by plaintiff, or transferred to a trustee pursuant to Section V of this Final Judgment, each defendant shall in accordance with past practices, with respect to each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets:

1. Use all reasonable efforts to maintain and increase sales of wireless mobile telephone services, and maintain and increase promotional, advertising, sales, technical assistance, and marketing support for the mobile telephone services sold by the wireless businesses;

2. Take all steps necessary to ensure that each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets is fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules;

3. Provide and maintain sufficient working capital and lines and sources of credit to maintain the Wireless System Assets as viable ongoing businesses;

4. Not remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any asset of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets, other than in the ordinary course of business, except as approved by plaintiff;

5. Maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of each month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets;

6. Be prohibited from terminating, transferring, or altering to the detriment of any employees who work with each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets as of the date of consummation of the Bell Atlantic/GTE Merger, any current employment or salary agreements, except (a) in the ordinary course of business, (b) for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, (c) for an individual who has written offer of employment from a third party for a like position, or (d) as necessary to promote accomplishment of defendants' obligations under this Final Judgment; and

7. Take no action that would impede in any way or jeopardize the sale of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets.

C. On or before the consummation of the Bell Atlantic/GTE Merger, defendants shall assign complete managerial responsibility over each wireless business that they have an ownership interest in or operate in the Overlapping Wireless Markets to a specified manager who shall not participate, during the period of such responsibility, in the management of any of the defendants' other businesses.

D. Defendants shall, during the period before all Wireless System Assets have been divested to a purchaser(s) or transferred to the trustee pursuant to Section V of this Final Judgment, each appoint a person or persons to oversee the Wireless System Assets owned by that defendant, who will be responsible for defendants' compliance with the requirements of Sections VII and IX of this Final Judgment. Such person(s) shall not be an officer, director, manager, employee, or agent of the other defendant.

X. Compliance Inspection

For the purposes of determining or securing compliance of defendants with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant made to its principal office, shall be permitted without restraint or interference from defendants:

1. To have access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, and to take sworn testimony from the officers, directors, employees, or agents of defendants, who may have counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the

Antitrust Division, made to defendants at their principal offices, defendants shall submit writ ten reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section X or Sections VI and VII shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by defendants), except in the course of legal proceedings to which the United States is a party (including a grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, ''Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Further Provisions and Termination

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgment shall expire on the tenth anniversary of the date of its entry.

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Bell Atlantic Corporation and GTE Corporation, Defendants.

[Civil No.: 99–119 (LFO); Filed: May 7, 1999]

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h)(''APPA''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on May 7, 1999, alleging that the proposed acquisition of GTE Corporation (''GTE'') by Bell Atlantic Corporation (''Bell Atlantic'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18 by lessening competition in the markets for wireless mobile telephone services in 10 major trading areas (''MTAs''), 65 metropolitan statistical areas (''MSAs'') and rural service areas (''RSAs'') in Florida, Alabama, Illinois, Indiana, Texas, Virginia, Wisconsin, New Mexico, and South Carolina. In the 10 MTAs, Bell Atlantic has a 50% interest in PCS PrimeCo, L.P. (''PrimeCo''), a firm that provides personal communications services (''PCS'') in 61 MSAs and RSAs where cellular mobile telephone services are provided by GTE, or by a firm that GTE has an interest in or will acquire. In addition, this acquisition affects four additional MSAs where competing cellular mobile wireless telephone businesses are owned in whole or in part by Bell Atlantic and GTE. These areas are identified in the Complaint as the ''Overlapping Wireless Markets.''

Shortly before the Complaint in this matter was filed the United States and defendants reached agreement on the terms of a proposed Final Judgment, which requires Bell Atlantic and GTE to divest one of the wireless telephone businesses in each of the Overlapping Wireless Markets. In each of the Overlapping Wireless Markets, defendants can choose which wireless business to divest. The proposed Final Judgment also contains provisions, explained below, designed to minimize any risk of competitive harm that otherwise might arise pending completion of the divestiture. The proposed Final Judgment and a Stipulation by plaintiff and defendants consenting to its entry were filed simultaneously with the Complaint.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (''APPA''). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and defendants have also stipulated that defendants will comply with the terms of the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the Final Judgment by the Court. Should the Court decline to enter the Final Judgment, defendants have also committed to continue to abide by its requirements until the expiration of time for any appeals of such ruling.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Bell Atlantic is one of the remaining five Regional Bell Operating Companies (''RBOCs'') created in 1984 by the consent decree settling the United States' antitrust case against American Telephone & Telegraph Co. GTE is the largest non-RBOC local telephone operating company in the United States. Bell Atlantic and GTE each provide local exchange services in distinct regions, and they also provide wireless mobile telephone services, including cellular mobile telephone services and PCS, both within and outside of their local exchange service regions. Bell Atlantic is a 50% partner in PrimeCo, a firm that provides wireless mobile telephone services in many areas of the country.

Bell Atlantic, with headquarters in New York City, New York, is one of the largest RBOCs in the United States, with approximately 42 million total local telephone access lines. In 1998, Bell Atlantic had revenues in excess of $31 billion. Bell Atlantic provides local telephone services to retail customers in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, as well as cellular mobile telephone services in those states. Bell Atlantic also provides cellular mobile telephone services in some areas outside its local exchange service region, including areas within the states of Arizona, Georgia, North Carolina, New Mexico, South Carolina, and Texas. Through its 50% partnership in PrimeCo, Bell Atlantic provides wireless service in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, Ohio, Oklahoma, Texas,

Virginia, and Wisconsin. Bell Atlantic is the nation's fourth largest wireless mobile telephone service provider, with about 6.6 million subscribers nationwide.

GTE, with headquarters in Irving, Texas, is the largest non-RBOC local telephone company in the United States, with over 23 million total local telephone access lines. In 1998, GTE had revenues in excess of $25 billion. GTE provides local telephone service to retail customers in Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, and it also provides wireless mobile telephone service in most of these states. GTE is a major wireless mobile telephone service provider with about 4.8 million subscribers nationwide. GTE also has entered in to an agreement, dated April 2, 1999, to acquire certain cellular mobile telephone businesses from Ameritech Mobile Phone Service of Illinois, Inc., and Ameritech Mobile Phone Services of Chicago, Inc., (''Ameritech'') for $3.27 billion, which would make GTE a provider of cellular mobile telephone services in additional areas in Illinois and Indiana. The acquisition of the Ameritech cellular businesses would add about 1.7 million subscribers to GTE's total number of wireless subscribers nationwide.

On July 28, 1998, Bell Atlantic and GTE entered into a merger agreement whereby the two firms would merge in a transaction valued at approximately $53 billion dollars at the time of the agreement. If this transaction is consummated, the combined total of Bell Atlantic's and GTE's cellular and other wireless mobile telephone service subscribers, absent divestitures, would be 13.1 million, including the number of subscribers GTE would receive from its acquisition of Ameritech cellular business.

B. Wireless Mobile Telephone Services

Wireless mobile telephone services permit users to make and receive telephone calls, using radio transmissions, while traveling by car or by other means. The mobility afforded by this service is a valuable feature to consumers, and cellular and other wireless mobile telephone services are commonly priced at a substantial premium above landline services. In order to provide this capability, wireless carriers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of local and long distance landline carriers, and with the networks of other wireless carriers. In 1998, revenues from the sale of wireless mobile telephone services totaled approximately $30 billion in the United States.

Initially, wireless mobile telephone services were provided principally by two cellular systems in each MSA and RSA license area. Cellular licenses were awarded by the Federal Communications Commission (''FCC'') beginning in the early 1980s, within any given MSA or RSA.[1] Providers of Specialized Mobile Radio (''SMR'') services typically were also authorized to operate with some additional spectrum in these areas, including the Overlapping Wireless Markets.

In 1995, the FCC allocated (and subsequently issued licenses for) additional spectrum for the provision of PCS, a type of wireless telephone service that includes wireless mobile telephone services comparable to those offered by cellular carriers. In 1996 one SMR spectrum licensee began to use its SMR spectrum to offer wireless mobile telephone services, comparable to that offered by cellular providers and bundled with dispatch services, in a number of areas including some of the Overlapping Wireless Markets. While the areas for which PCS providers are licensed (MTAs and basic trading areas (''BTAs'')) differ somewhat from the cellular MSAs and RSAs, they generally overlap with them. In many areas, including most of the Overlapping Wireless Markets, not all of the PCS license holders have started to offer services or even begun to construct the facilities necessary to begin offering service. The PCS providers have tended to enter in the largest cities first, entering in smaller markets only later and not on as wide a scale. Moreover, even in those areas where one or more PCS providers have constructed their networks and have started to offer service, including the Overlapping Wireless Markets, the incumbent cellular providers, such as Bell Atlantic and GTE, still typically have substantially larger market shares than the new entrants.

[1] 25 MHz of spectrum was allocated to each cellular system in an MSA or RSA. MSAs are the 306 urbanized areas in the United States, defined by the federal government, and used by the FCC to define the license areas for urban cellular systems. RSAs are the 428 areas defined by the FCC used to define the license areas for rural cellular systems outside of MSAs.

C. Anticompetitive Consequences of the Proposed Acquisition

Bell Atlantic and GTE, or firms in which they have an interest, are or will be competing providers of wireless mobile telephone services in 65 cellular license areas in nine states. These areas are referred to in the Complaint as follows:

I. PCS/Cellular Overlap Areas

A. Jacksonville MTA
1. Jacksonville MSA
2. Florida 5—Putnam RSA

B. Miami-Fort Lauderdale MTA
1. Fort Myers MSA
2. Florida 1—Collier (B1) RSA
3. Florida 2—Glades (B1) RSA
4. Florida 3—Hardee RSA
5. Florida 11—Monroe (B2) RSA

C. Tampa-St. Petersburg-Orlando MTA
1. Tampa-St. Petersburg MSA
2. Lakeland-Winter Haven MSA
3. Sarasota MSA
4. Bradenton MSA
5. Florida 2—Glades (B1) RSA
6. Florida 3—Hardee RSA
7. Florida 4—Citrus (B1) RSA

D. New Orleans-Baton Rouge MTA
1. Mobile, AL MSA
2. Pensacola, FL MSA

E. Chicago MTA
1. Aurora-Elgin, IL MSA
2. Bloomington-Normal, IL MSA
3. Champaign-Urbana-Rantoul, IL MSA
4. Chicago, IL MSA
5. Decatur, IL MSA
6. Fort Wayne, IN MSA
7. Gary-Hammond-East Chicago, IN MSA
8. Joliet, IL MSA
9. Kankakee, IL MSA
10. Rockford, IL MSA
11. Springfield, IL MSA
12. Illinois 1—Jo Daviess RSA
13. Illinois 2—Bureau (B1) RSA
14. Illinois 2—Bureau (B3) RSA
15. Illinois 3—Mercer RSA
16. Illinois 4—Adams (B1) RSA
17. Illinois 5—Mason (B2) RSA
18. Illinois 6—Montgomery RSA
19. Illinois 7—Vermilion RSA
20. Indiana 1—Newton (B1) RSA
21. Indiana 1—Newton (B2) RSA
22. Indiana 3—Huntington RSA

F. Dallas-Fort Worth MTA
1. Dallas-Fort Worth MSA
2. Austin MSA
3. Sherman-Denison MSA
4. Texas 10—Navarro (B3) RSA
5. Texas 11—Cherokee (B1) RSA
6. Texas 16—Burleson RSA

G. Houston MTA
1. Houston MSA
2. Beaumont-Port Arthur MSA
3. Galveston MSA
4. Bryan-College Station MSA
5. Victoria MSA
6. Texas 10—Navarro (B3) RSA
7. Texas 11—Cherokee (B1) RSA
8. Texas 16—Burleson RSA
9. Texas 17—Newton RSA
10. Texas 20—Wilson (B2) RSA
11. Texas 21—Chambers RSA

H. San Antonio MTA
1. San Antonio MSA

2. Texas 16—Burleson RSA
3. Texas 20—Wilson (B2) RSA

I. Richmond-Norfolk MTA
1. Norfolk-Virginia Beach-Portsmouth MSA
2. Richmond MSA
3. Newport News-Hampton MSA
4. Petersburg-Colonial Heights MSA
5. Virginia 7—Buckingham (B1) RSA
6. Virginia 8—Amelia RSA
7. Virginia 9—Greensville RSA
8. Virginia 11—Madison (B1) RSA
9. Virginia 12—Caroline (B1) RSA
10. Virginia 12—Caroline (B2) RSA

J. Milwaukee MTA
1. Wisconsin 8—Vernon RSA

II. Cellular MSA Overlap Areas

A. Greenville, SC MSA
B. Anderson, SC MSA
C. El Paso, TX MSA
D. Las Cruces, NM MSA

In the Overlapping Wireless Markets, the population potentially addressable by wireless mobile telephone systems exceeds 25 million.

GTE and Bell Atlantic are direct competitors in wireless mobile telephone services in the Cellular MSA Overlap Areas. The cellular businesses owned in whole or in part by Bell Atlantic and GTE are the only two providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in the Cellular MSA Overlap Areas. In addition, GTE and PrimeCo, and Ameritech and PrimeCo, are direct competitors in wireless mobile telephone services in the PCS/Cellular overlap Areas. In each of the Overlapping Wireless Markets, the wireless businesses owned or to be owned in whole or in part by Bell Atlantic and GTE compete to sell the best quality service at the lowest possible rates and are among each other's most significant competitors. In each of the PCS/Cellular Overlap Areas, the cellular business to be acquired or owned in whole or in part by GTE and the PCS business owned by PrimeCo are two of a small number of providers of wireless mobile telephone services.

Therefore, bell Atlantic's acquisition of GTE would cause the level of concentration among firms providing wireless mobile telephone services in each of the Overlapping Wireless Markets to increase significantly. A high level of concentration in the provision of wireless mobile telephone services already exists in each of the Overlapping Wireless Markets. In the Cellular MSA Overlap Areas, Bell Atlantic's and GTE's individual market shares, measured on the basis of the number of subscribers, exceed 35%. The combined market share of GTE and Bell Atlantic in the provision of wireless mobile telephone services, measured by the number of subscribers, is in the range of 75 to 95%, taking into account other operational wireless mobile competitors. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed by the Department of Justice in merger analysis and is explained in more detail in Appendix A to the Complaint, concentration in these markets is already in excess of 2800, well above the 1800 threshold at which the Department normally considers a market to be highly concentrated. After the merger, the HHI in these markets will be in excess of 5500.

In each of the PCS/Cellular Overlap Areas, the GTE or Ameritech cellular business has one of the two largest market shares in the provision of wireless mobile telephone services, and PrimeCo is one of a small number of new PCS entrants into these markets. In some of these markets, such as Richmond, Houston, and Tampa, PrimeCo was the first new PCS entrant, is the third largest wireless firm in terms of number of subscribers, and has managed to garner a significant share. Competition between PrimeCo and GTE or Ameritech, created by PrimeCo's entry into markets that were previously an effective duopoly, has resulted in lower prices and higher quality in these markets than would otherwise have existed absent such competition. There is already a high level of concentration in the provision of wireless mobile telephone services in the PCS/Cellular Overlap Areas. In virtually all, the individual shares of the two cellular carriers—one of which is GTE or Ameritech—are in the range of 30 to 40% and the HHI exceeds 2000. In the PCS/Cellular Overlap Areas, the combined market share of PrimeCo and the cellular business in question is generally in the 35 to 50% range.

If GTE and Bell Atlantic merge, and GTE completes its acquisition of the Ameritech cellular businesses, the PCS/Cellular Overlap Areas will become significantly more concentrated, and the competition between PrimeCo and GTE or Ameritech in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between the PrimeCo and GTE or Ameritech cellular businesses, there will be an increased likelihood both of unilateral actions by the combined firm in these markets to increase prices, diminish the quality or quantity of service provided, or refrain from making investments in network improvements, and of coordinated interaction among the limited number of remaining competitors that could lead to similar anticompetitive results. Therefore, the likely effect of the merger of Bell Atlantic and GTE is that prices would increase, and the quality or quantity of service together with incentives to improve network facilities would decrease, in the provision of wireless mobile telephone services in the PCS/Cellular Overlap Areas.

It is unlikely that entry within the next two years into wireless mobile telephone services in the Overlapping Wireless Markets would be sufficient to mitigate the competitive harm resulting from this acquisition, if it were to be consummated.

For these reasons, the United States concluded that the merger as proposed may substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of wireless mobile telephone services in the Overlapping Wireless Markets.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Requirement

The proposed Final Judgment will preserve competition in the sale of mobile wireless telephone services in each of the Overlapping Wireless Markets by requiring defendants to divest one of their two wireless telephone businesses in each of the Overlapping Wireless Markets. This divestiture will eliminate the change in market structure caused by the merger.

The divestiture requirements of the proposed Final Judgment, as stated in Sections IV.A and II.E, direct defendants to divest one of their wireless telephone businesses (to be selected by defendants) in each of the Overlapping Wireless Markets. Section IV.C permits different wireless businesses in separate Overlapping Wireless Markets to be divested to different purchasers, but requires that, for any individual wireless business, the Wireless System Assets be divested entirely to a single purchaser, unless the United States otherwise consents in writing.

The proposed Final Judgment's divestiture provisions are intended to accomplish the ''complete divestiture of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets,'' as Section II.E states. Section II.E also specifies in detail the types of assets to be divested, which collectively are described throughout the consent decree as ''Wireless System Assets,'' and addresses some special circumstances concerning the divestiture of those assets. In all of the Overlapping Wireless Markets, Wireless System Assets means all types of assets, tangible and intangible, used by defendants in the operation of each of the wireless

businesses to be divested, including the provision of long distance telecommunications service for wireless calls. Section II.E enumerates in detail, without limitation, particular types of assets covered by the divestiture requirement.

For the most part, the divesting defendant is required to transfer to the purchaser the complete ownership and/or other rights to the Wireless System Assets. However, the merged firm will retain a number of other wireless businesses in areas that do not overlap, and prior to the merger each defendant may have had certain assets that were used substantially in the operations of its overall wireless business and that must be retained to some extent to continue the existing operations of the wireless businesses not being divested. Section II.E permits special divestiture arrangements for such assets if they are not capable of being divided between the divested and retained wireless businesses, or if the divesting defendant and the purchaser agree not to divide them. For these assets, the divestiture requirement is satisfied if the divesting defendant grants to the purchaser, at the election of the purchaser, an option to obtain a non-exclusive, transferable license for a reasonable period to use the assets in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment.

The definition of Wireless System Assets in Section II.E contains special provisions relating to intellectual property. One addresses intellectual property rights that defendants may have under third-party licenses that could not be transferred to a purchaser entirely or by license without the consent of the third-party licensor. If any such assets are used by the wireless businesses being divested, defendants must identify them in a schedule submitted to plaintiff and filed with the Court as expeditiously as possible following the filing of the Complaint, in any event, prior to any divestiture and before the Court approves the proposed Final Judgment. Defendants must explain the necessary consents and how a consent would be obtained for each asset. This proviso is not intended to afford defendants any opportunity to withhold intellectual property rights over which they have any control, which could impair the ability of a purchaser to use the divested wireless business to compete effectively. It relates only to intellectual property assets that defendants have no power to transfer themselves, and defendants must do all that is possible to transfer the entire business of the divested wireless businesses. To make this clear, Section IV.G obligates defendants to cooperate with any purchaser as well as a trustee, if any, to seek to obtain the necessary third-party consents, if any assets require such consents before they may be transferred to a purchaser.

Another proviso relates to certain specific trademarks, trade names and service marks. Section II.E, defining the Wireless System Assets to be divested, generally requires the divestiture of trademarks, trade names and service marks, with the sixteen specified exceptions which contain names under which defendants' retained wireless businesses, or their corporate parents or affiliates, do business. Such trademarks, trade names and service marks, like other assets, are either to be divested in their entirety, except for marks and names that must be retained to continue the existing operations of defendants' remaining wireless properties and that are not capable of being divided (or that the divesting defendant and purchaser agree not to divide), which are to be made available to the purchaser through a non-exclusive, transferable license.

Under limited circumstances, defendants are allowed to retain specified portions of the Wireless System Assets in the Overlapping Wireless Markets. First, Section II.E.1 provides that if defendants elect to divest Bell Atlantic's interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHz of broadband PCS spectrum within that PCS/Celluar Overlap Area upon completion of the divestiture of the Wireless System Assets. In this instance, defendants will still be required to divest the entire PCS business, including 20 MHz of broadband PCS spectrum, to insure that the market structure does not change as a result of the merger and that the divested business will be able to compete as effectively under new ownership as under its current ownership.

Second, Section II.E.2 of the Final Judgment allows defendants to request approval from plaintiff to partition the PCS license along BTA geographic boundaries and retain assets in one or more specified non-overlapping BTAs, in the event that defendants elect to divest Bell Atlantic's interest in PCS business in one of the PCS/Cellular Overlap Areas. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be sold in the non-overlapping BTAs are not needed to assure the competitive viability of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity. Section II.E.2 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE Merger.

Finally, Section II.E.3 allows, with approval from plaintiff, the merged entity to retain both Bell Atlantic's PCS business and GTE's non-controlling minority interest in an overlapping cellular business in a PCS/Cellular Overlap Area. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition. GTE has a number of non-controlling minority interests in cellular businesses, ranging from 2% to 40%, in the Overlapping Wireless Markets. To be permitted to retain a minority cellular interest, defendants will be required to demonstrate that the interest they wish to keep is entirely passive, such that they receive no competitively sensitive information about the competing cellular business, and have no input into the business decisions of the competing cellular provider that could have anticompetitive consequences. Plaintiff, in its sole discretion, will determine that the retention of the non-controlling minority interest will not significantly diminish competition before approval will be granted for the merged firm to retain a minority interest. Section II.E.3 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the Bell Atlantic/GTE Merger.

Section IV contains other provisions to facilitate divestiture, including notification of the availability of the Wireless System Assets for purchase in Section IV.D, access to information about the Wireless System Assets in Section IV.E, and preservation of records in Section IV.H. In addition, to ensure that a purchaser will be able to operate the divested wireless businesses without impairment, Section IV.F prohibits defendants from interfering with a purchaser's negotiations to retain any employees who work or have worked with the Wireless System Assets since the date of the announcement of the merger, or whose principal responsibility relates to the Wireless System Assets.

B. Timing of Divestiture

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in Section IV.A, the divestitures of the Wireless System Assets in the Overlapping Wireless Markets on a strict schedule, but provides defendants with some flexibility in recognition of the special circumstances regarding Bell Atlantic's interest in PrimeCo.

Currently, Bell Atlantic has a 50% interest in PrimeCo, and its ability to divest this interest is limited by its partnership agreement. Bell Atlantic has publicly announced plans to dissolve the PrimeCo partnership. If this dissolution does occur, Bell Atlantic may take full ownership of some or all of the PrimeCo PCS businesses, and the other PrimeCo partner, Airtouch, may also take full ownership of some or all of the other PrimeCo PCS businesses. To the extent that Bell Atlantic's interest in one or more of the PrimeCo businesses is transferred to Airtouch, one or more of the wireless overlaps would be eliminated, thereby obviating the need for any further divestiture. To the extent that Bell Atlantic takes full control over one or more PrimeCo properties, it will enhance its ability to completely and satisfactorily divest its interest to an interested purchaser.

Under Section II.A, defendants must divest the Wireless System Assets in the Cellular MSA Overlap Areas to a purchaser or purchasers approved by the United States on or before consummation of Bell Atlantic/GTE merger. Similarly, if Bell Atlantic has acquired 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas more than ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, defendants will be required to divest the Wireless System Assets in the PCS/Cellular Overlap Areas on or before consummation of the Bell Atlantic/GTE Merger.

If, ninety (90) calendar days prior to consummation of the Bell Atlantic/GTE Merger, the PrimeCo dissolution is not complete and Bell Atlantic has not acquired 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas, defendants will submit to plaintiff, on or before consummation of the Bell Atlantic/GTE Merger, a definitive Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested. The cellular MSA and RSA businesses on the Divestiture List are required to be divested within ninety (90) calendar days after consummation of the Bell Atlantic/GTE Merger; except that if Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas within the ninety (90) calendar day period prior to consummation of the Bell Atlantic/GTE Merger, the cellular MSA and RSA businesses on the Divestiture List shall be divested on or before consummation of the Bell Atlantic/GTE Merger. Additionally, the PCS MTA businesses on the Divestiture List shall be divested within 90 calendar days after Bell Atlantic acquires 100% ownership of one or more of the PCS businesses currently operated by PrimeCo in MTAs in the PCS/Cellular Overlap Areas, but in no event later than one hundred eighty (180) calendar days after consummation of the Bell Atlantic/GTE Merger. If all Wireless System Assets have not been divested upon consummation of the Bell Atlantic/GTE merger, there will be no adverse impact on competition, because defendants are required to operate the businesses independently, pursuant to the Hold Separate Order contained in Section IX of the Final Judgment. Defendants are also required by Section IV.B to use their best efforts to accomplish the divestitures of the Wireless System Assets in the Overlapping Wireless Markets and to obtain all required regulatory approvals as expeditiously as possible.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time do not burden the parties unnecessarily. Although the proposed Final Judgment, in some circumstances, permits the parties to retain both wireless properties for some period of time after closing, the primary reason for this involves the nature of Bell Atlantic's interest in PrimeCo. The proposed Final Judgment is designed to provide time for the PrimeCo partnership to be dissolved. The additional time period, beyond the closing date of the Bell Atlantic/GTE merger, in which the merged firm can hold both wireless properties pending divestiture applies only to PCS/cellular overlaps and is dependent in part on when Bell Atlantic takes control of one or more PrimeCo properties. However, in no event can the merged firm retain both wireless properties beyond 180 days after closing. Thus, the Final Judgment strikes a balance between allowing the parties time to resolve their special situation and guaranteeing a timely divestiture. The period in which the merged firm will own both entities should not pose any significant competitive risks because the Hold Separate Order, contained in Section IX, will be in place during this time, and the time will be short.

In addition, the proposed Final Judgment requires in Section IV.B that, in carrying out the divestitures, defendants comply with all of the applicable rules of the FCC, or any waiver of such rules or other authorization granted by the FCC. These rules include 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership).[2] These FCC requirements may add to, but cannot subtract from or impair, the requirements of the proposed Final Judgment, since Section IV.B specifies that authorization by the FCC to conduct divestiture of a wireless business in a particular manner will not modify any of the requirements of the decree. The provisions of the proposed Final Judgment have been designed to avoid any conflict with the FCC's rules. Since the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section V.F provides one exception to the 180-day divestiture period. If applications for transfer of a wireless license have been filed by the FCC within the 180-day period, but the FCC has not granted approval before the end of that time, the period for divestiture of the specific Wireless System Assets covered by the license that cannot yet be transferred shall be extended until five days after the FCC's approval is received. This extension is to be applied only to the individual wireless license affected by the delay in approval of the license transfer and does not entitle defendant to delay the divestiture of any other Wireless System Assets for which license transfer approval has been granted.

[2] The FCC's spectrum aggregation rules, in 47 CFR 20.6, do not permit a licensee to have an attributable interest in more than 45 MHz of spectrum licensed for cellular, PCS or SMR with significant overlap in any geographic area. The FCC will attribute an interest if it is controlling, or if in most cases it is 20% or more of the equity, outstanding stock or voting stock of the licensee. The FCC's cellular cross-ownership rules, in 47 CFR 22.941, also prohibit a licensee or any person controlling a licensee from having a direct or indirect ownership interest of more than 5% in both cellular systems in an overlapping cellular geographic service area, unless such interests pose ''no substantial threat to competition.''

C. Use of a Trustee Subsequent to Consummation of the Acquisition

The proposed Final Judgment provides in Section IV.A that Bell Atlantic and GTE must divest the Wireless Assets in each of the Overlapping Wireless Markets in accordance with the schedule contained therein, either to purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of the Final Judgment. As part of this divestiture, Bell Atlantic and GTE must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the trustee will own and control the systems until they are sold to a final purchaser, subject to safeguards to prevent Bell Atlantic and GTE from influencing their operation.

Section V details the requirements for the establishment of the trust, the selection and compensation of the trustee, the responsibilities of the trustee in connection with divestiture and operation of the Wireless System Assets, and the termination of the trust. If defendants have not divested all of their Wireless System Assets in the Overlapping Wireless Markets to approved purchasers in accordance with Section IV.A, Section V.A requires: (1) Defendants to identify the Wireless System Assets in each Overlapping Wireless Market to be divested; (2) the Court to appoint a trustee, which shall be selected by the United States; (3) defendants to submit a form of Trust Agreement consistent with the terms of the Final Judgment, and which form agreement must have received approval by the United States; and (4) defendants, after receiving FCC approval for the license transfers, to divest irrevocably the unsold Wireless System Assets to the trustee.

The trustee will have the obligation and the sole responsibility, under Section V.B, for the divestiture of any transferred Wireless System Assets. The trustee has the authority to accomplish divestitures at the earliest possible time and ''at the best price then obtainable upon a reasonable effort by the trustee.'' In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. This provision allows plaintiff, in its discretion, to require defendants to divest additional Wireless System Assets that substantially relate to the wireless mobile telephone business to insure that the trustee can promptly locate and divest to a purchaser acceptable to plaintiff. Defendants are not entitled to object to divestiture based on the adequacy of the price the trustee obtains or any other ground, unless the trustee's conduct amounts to malfeasance. The terms of the trustee's compensation, under Section V.C, will provide incentives based on the price and terms of the divestiture and the speed with which it is accomplished. As provided by Sections V.B and V.C., defendants will pay the compensation and expenses of the trustee, and of any investment bankers, attorneys or other agents that the trustee finds reasonably necessary to assist in the divestiture and the management of the Wireless System Assets.

The trusteeship mechanism has been used by the FCC, in a variety of contexts, to provide a short period of time in which to complete a sale of a spectrum licensee that must be divested, while permitting the broader merger or acquisition that necessitates the divestiture to go forward. In this content, the critical feature of the trusteeship arrangement is that the trustee will not only have responsibility for sale of the Wireless System Assets, but will also be the authorized holder of the wireless license, with full responsibility for the operations, marketing and sales of the wireless business to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation or management of the Wireless System Assets to be divested following consummation of their merger, as provided by Section V.H, other than the right to received the proceeds of the sale, and certain obligations to provide cooperation to the trustee in order to complete the divestiture, as indicated in Section V.D. Defendants are precluded under Section V.H. from communicating with the trustee, or seeking to influence the trustee, concerning the divestiture or the operation and management of the wireless businesses transferred, apart from the limited communications necessary to carry out the Final Judgment and to provide the trustee with the necessary resources and cooperation to complete the divestitures. Defendants and the trustee are subject to an absolute prohibition on exchanging any non-public or competitively sensitive marketing, sales or pricing information relating to either of the wireless businesses in the Overlapping Wireless Markets. These safeguards will protect against any competitive harm that could arise from coordinated behavior or information sharing between the two wireless businesses during the limited period while sale of the Wireless System Assets is not yet complete. They ensure that the trusteeship arrangement is consistent with the FCC's rules.

D. Criteria for the United States' Approval of Purchasers

Under the proposed Final Judgment, the United States has an important role in the approval of purchasers for each of the divested wireless businesses, to ensure that the purchasers chosen by defendants or the trustee are adequate from a competitive viewpoint. The United States' approval or rejection of a purchaser is at its sole discretion, as Section IV.A specifies, but the consent decree also embodies certain criteria that the United States will apply in making the approval decision.

In the case of any divestiture, by defendants or the trustee, it is important to ensure that the ongoing wireless businesses go to purchasers with the capability and intent to operate them as effective competitors in the lines of business they already serve, and that there are no conditions restricting competition in the terms of the sale. Specifically, Section IV.C of the proposed Final Judgment requires that the divestitures of Wireless System Assets be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) The purchaser(s) has the capability and intent to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; (2) the purchaser(s) has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; and (3) none of the terms of any agreement between the purchaser(s) and either of defendants shall give defendants the ability unreasonably (i) to raise the purchaser(s)'s costs, (ii) to lower the purchaser(s)'s efficiency, (iii) to limit any line of business which a purchaser(s) may choose to pursue using the Wireless System Assets, or otherwise to interfere with the ability of the purchaser(s) to compete effectively. All of these criteria must be satisfied whether the divestiture is accomplished by defendants or the trustee.

E. Other Provisions of the Decree

Section III specifies the persons to whom the Final Judgment is applicable,

and provides for the Final Judgment to be applicable to certain Interim Parties to whom defendants might transfer the Wireless System Assets, other than purchasers approved by the United States.

Section VI obliges defendants, or the trustee if applicable, to notify the United States of any planned divestiture of Wireless System Assets within two business days of executing a binding agreement with a purchaser. It enables the United States to obtain information to evaluate the chosen purchaser as well as other prospective purchasers who expressed interest and establishes a procedure for the United States to notify defendants and the trustee whether it objects to a divestiture. The United States' notification of its lack of objection is necessary for a divestiture to proceed. This section also provides for an objection by defendants to a sale by the trustee under the limited situation of alleged malfeasance, but in that case it is possible for the Court to approve a sale over defendants' objection.

Section VII establishes affidavit requirements for defendants to report to the United states on their compliance with the proposed Final Judgment, their activities in seeking to divest the Wireless System Assets prior to consummating their merger, and their actions to preserve the Wireless System Assets to be divested. Under V.E, the trustee also has monthly reporting obligations concerning the efforts made to divest the Wireless System Assets.

Section VIII prohibits defendants from financing all or any part of a purchase made by an acquirer of the Wireless System Assets, whether the divestiture is carried out by defendants or by the trustee.

Section IX, the Hold Separate Order, contains important requirements concerning the operation of the wireless businesses before divestiture is complete, and the preservation of the Wireless System Assets as a viable, ongoing business. The obligations of Section IX.A fall on both defendants and both wireless businesses in any Overlapping Wireless Market, obliging them to ensure that such wireless businesses continue to be operated as separate, independent, ongoing, economically viable and active competitors to the other wireless mobile telecommunications providers in the same area. Section XI.A requires separation of the operations of the two wireless businesses and their books, records and competitively sensitive information. The requirements of Section IX.A serve to ensure that defendants maintain their two wireless businesses in the Overlapping Wireless Markets as fully separate competitors prior to consummating their merger, notwithstanding their expectations that the merger will take place, and reinforce the provisions of Section V.H concerning the separation of defendants and the trustee after the merger is consummated but while there are still Wireless System Assets awaiting sale.

Section IX.B requires the defendant whose assets will be divested (or both, if it has not yet been decided which system will be divested in a particular market) to take certain specified steps to preserve the assets in accordance with past practices. These steps including maintaining and increasing sales, maintaining the assets in operable condition, providing sufficient credit and working capital, not selling the assets (except with approval of plaintiff), not terminating, transferring or reassigning employees who work with the assets (with certain limited exceptions), and not taking any actions to impede or jeopardize the sale of the assets. Section IX.D obliges each defendant, during the period while they still control Wireless System Assets, to appoint persons not affiliated with the other defendant to oversee the Wireless System Assets to be divested and to be responsible for compliance with the Final Judgment.

In order to ensure compliance with the Final Judgment, Section X gives the United States various rights, including inspection of defendants' records, the ability to conduct interviews and take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and information the United States obtains using these powers is protected by specified confidentiality obligations, which permit sharing of information with the FCC under a customary protective order issued by the agency or a waiver of confidentiality. Under Section III.B, purchasers of the Wireless System Assets must also agree to give the United States similar access to information.

The Court retains jurisdiction under Section XI, and Section XII provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court. Although the required divestitures will be accomplished in a considerably shorter time, defendants are also precluded from reacquiring the divested properties within the term of the decree.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 USC 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to; Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides, in Section XI, that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out construe the Final Judgment, to modify any if its provisions, to enforce compliance, and to punish any violations of its provisions.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the merger and a full trial on the merits. The United States is satisfied, however, that the divestiture of Wireless System Assets and other relief contained in the proposed Final Judgment will preserve competition in the provision of wireless mobile telephone services in the Overlapping Wireless Markets. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits on the violations alleged in the complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if the divestitures of the Wireless System Assets are carried out in the manner required by the proposed Final Judgment.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 USC 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting his inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981)); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict that the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *American Tel & Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983) (quoting *Gillette Co.*, 406 F. Supp. at 716); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

Dated: June 7, 1999.

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[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedure are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

[4] Bechtel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also Microsoft, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the reaches of public interest'').

Respectfully submitted,

Joe I. Klein,

Assistant Attorney General.

A. Douglas Melamed,

Principal Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Donald J. Russell,

Chief, Telecommunications Task Force.

Laury E. Bobbish,

Assistant Chief, Telecommunications Task Force.

Hillary B. Burchuk, D.C. Bar #366755,

Lawrence M. Frankel, D.C. Bar #441532,

J. Philip Sauntry, Jr., D.C. Bar #142828,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621.

Certificate of Service

I hereby certify that copies of the foregoing Plaintiff United States' Competitive Impact Statement, were served via U.S. Mail, first class postage prepaid, on this 7th day of June, 1999 upon each of the parties listed below:

John Thorne, Senior Vice President & Deputy General Counsel, Bell Atlantic Corporation, 1320 North Court House Road, Eighth Floor, Arlington, VA 22201, Counsel for Bell Atlantic Corporation.

Steven G. Bradbury, Kirkland & Ellis, 655 Fifteenth Street, NW., Washington, DC 20005, Counsel for GTE Corporation.

Hillary B. Burchuk,

Counsel for Plaintiff.

[FR Doc. 99–15418 Filed 6–16–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Computer Associates International, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Amended Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Computer Associates, International, Inc. and PLATINUM Technology International, Inc.*, Civil Action No. 1:99CV01318. On May 25, 1999, the United States filed a Complaint and on June 8, 1999, the United States filed amendments to the Complaint. The Complaint, as amended, alleges that the proposed acquisition by Computer Associates International, Inc. (CA) of PLATINUM Technology International, Inc. (Platinum) would violate Section 7 of the Clayton Act, 15 U.S.C. 18, in the markets for the following systems management software products used on IBM and IBM-compatible mainframe computers with the MVS (now renamed OS/390) or VSE operating systems: (1) MVS (OS/390) job scheduling and rerun software; (2) VSE job scheduling and rerun software; (3) MVS (OS/390) tape management software; (4) VSE automated operations software; (5) MVS (OS/390) change management software; (6) MVS (OS/390) job accounting and chargeback software and (7) VSE job accounting and chargeback software. The proposed Amended Final Judgment, filed at the same time as the amendments to the Complaint, requires the appointment of a trustee to divest to a purchaser approved by the United States the software products that Platinum sells in each of these markets, along with certain related tangible and intangible assets. Copies of the Complaint, amendments to the Complaint, proposed Amended Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Nancy M. Goodman, Chief, Computers & Finance Section, Antitrust Division, U.S. Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530 (telephone: (202) 307–6200).

Constance Robinson,

Director of Operations and Merger Enforcement.

United States of America, Plaintiff, v. Computer Associates International, Inc. and Platinum Technology International, Inc., Defendants.

[Civil Action No. _____; Filed: May 25, 1999]

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Computer Associates'' means defendant Computer Associates International, Inc., a Delaware corporation with its headquarters in Islandia, New York, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''Platinum'' means defendant PLATINUM technology International, inc., a Delaware corporation with its headquarters in Oakbrook Terrace, Illinois, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Defendants'' means, collectively or individually as the context requires, Computer Associates and/or Platinum.

D. ''Acquirer'' means acquirer or acquirers of any of the Platinum Assets ordered to be divested by Section IV.A of the proposed Final Judgment attached hereto.

E. ''Divested Product'' means each of the following software products supplied by Platinum for use with the OS/390 or MVS mainframe operating system: (a) AutoSys/Zeke (formerly Altai's Zeke), (b) AutoRerun (formerly Altai's Zebb), (c) AutoMedia (formerly Altai's Zara), (d) CCC/Life Cycle Manager; and each of the following software products supplied by Platinum for use with the VSE mainframe operating system, (e) AutoSys/Zeke (formerly Altai's Zeke), and (f) AutoAction (formerly Altai's Zack). With respect to each of the foregoing, a Divested Product includes each predecessor version of the product and each version that has been or is currently under development or that has been developed but has not been sold or distributed.

F. ''Platinum Assets'' means all tangible and intangible property or property rights owned or licensed by Platinum and reasonably required in developed, testing, producing, marketing, licensing, selling, or distributing any Divested Product, or in supplying any support or maintenance services for any Divested Product. The Platinum Assets include all of Platinum's rights, titles and interests in any asset which Platinum has the right to convey, license, sublicense or assign. If Platinum's rights in any Platinum Asset are licensed under terms that would prevent it from conveying, licensing, sublicensing or assigning

such rights to an Acquirer, defendants shall take no action (such as asserting or enforcing any exclusive rights included in Platinum's license of its rights to the asset) to bar the licensor of such asset from licensing rights in the asset to an Acquirer for use with any Divested Product, and defendants shall take all reasonable steps (including, but not limited to, promptly executing necessary documents or agreements with such licensor) to cooperate with and assist an Acqurier in obtaining such a license, provided, however, that nothing contained herein shall prevent defendants from asserting or enforcing any exclusive rights possessed by Platinum to prevent an Acquirer from using such licensed assets other than with a Divested Product. The Platinum Assets include, but are not limited to:

(1) Each Divested Product;

(2) All source code and object code for the version or versions of a Divested Product currently being sold or distributed anywhere in the world (including patches), all existing source code and object code for all prior versions previously sold or distributed anywhere in the world (including patches), and all other source code and object code for all versions of a Divested Product under development or developed but not yet being sold or distributed (including patches). Defendants shall not retain copies of any of the foregoing code, provided however, that to the extent at the time Computer Associates announced its proposed acquisition of Platinum any such code was also contained in Platinum products other than Divested Products (''retained code'') defendants shall retain a perpetual, irrevocable, fully paid-up worldwide license to retain and use such retained code in any products that are not Divested Products, except that defendants shall not use such retained code to develop a product that is substantially identical to a Divested Product or that competes in any market described in the Complaint. The proposed Final Judgment attached hereto imposes no restrictions on defendants with respect to products, or source and object code for such products, owned or controlled by Computer Associates at the time Computer Associates announced its proposed acquisition of Platinum;

(3) All software customizations, optional modules and add-ons for a Divested Product;

(4) All development tools, development environments, proprietary programming languages, know-how, designs, drawings, specifications, research data, trade secrets, copyrights, rights under patents, and all other intellectual property which Platinum has used to develop, upgrade, or maintain a Divested Product;

(5) All software programs, instructions, manuals, know-how, trade secrets, or documentation that Platinum has used or supplied to a user of a Divested Product to facilitate installation or operation of any Divested Product, or to facilitate migration or conversion to the use of any Divested Product from the use of any other product;

(6) All technical or development documentation, and all marketing information, sales training material, sales collateral, customer lists and credit reports and maintenance documentation used for a Divested Product;

(7) Assignment of license or maintenance agreements including a Divested Product. In the event any such license or maintenance agreement includes any products or services other than a Divested Product, defendants or such other persons holding ownership rights to such other products or services shall retain all contractual rights relating to such other products or services;

(8) With respect to all assigned licenses and maintenance agreements identified in Subsection I.F.(7) above, a sum of money equal to the pro rata amount of all maintenance fees for a Divested Product already paid to defendants pursuant to such maintenance agreements to the extent such fees paid relate to service periods after the date of such assignment. With respect to all such assigned licenses and maintenance agreements that include any products or services other than a Divested Product, the maintenance fees to be attributed to a Divested Product shall be calculated on a pro rata basis by apportioning the maintenance fees among the products and services subject to such agreements in a ratio derived from the list price of each product or service as of the date upon which such license and maintenance agreement became effective to the total of such list prices for all the products and services subject to such agreements. For any multi-year agreement assigned, the allocation described herein applies only to that portion of revenues attributable to maintenance fees. Defendants shall not allocate nor shall any Acquirer be entitled to receive any portion of revenues attributable to licensing of a Divested Product. This method of allocation of maintenance fees applies to both the allocation of maintenance fees already paid to defendants and payable in the future relating to service periods after the date of such assignment;

(9) All files and records maintained by Platinum for any customer licensee of any Divested Product, including customer licenses, maintenance agreements, and other agreements, all customer call reports (or portions thereof relating to any Divested Product), pricing information for the Divested Products, support and maintenance logs for the Divested Products; all customer leads, customer pipeline reports, customer proposals or other information maintained by defendants to license and support any Divested Product. Where any such information relates to both a Divested Product and other products and services, defendants shall use their best efforts to segregate the information that relates to the Divested Products and shall provide, and shall not retain, such segregated information to the Acquirer; and

(10) The trademarks ''Zeke'', ''Zebb'', ''Zara'', ''Zack'', ''AutoRerun'', and ''AutoMedia'', and for a period of eighteen (18) months from the time the Acquirer purchases the Divested Product, the Acquirer of AutoSys/Zeke may use the phrase ''formerly known as AutoSys/Zeke'' in connection with the marketing, sale, or distribution of that Divested Product; the Acquirer of AutoAction for VSE may use the phrase ''formerly known as AutoAction for VSE'' in connection with the marketing, sale, or distribution of that Divested Product; the Acquirer of CCC/Life Cycle Manager may use the phrases ''formerly known as CCC/Life Cycle Manager'' and ''formerly known as CCC/LCM'' in connection with the marketing, sale, or distribution of that Divested Product, and thereafter, defendants will not object to that Acquirer's use of ''Life Cycle Manager'' or ''LCM''.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Platinum Assets for the purpose of preserving and maintaining competition that currently exists between Computer Associates and Platinum in the markets for the development, sale and maintenance of the mainframe software products described in the Complaint and thereby to remedy the anticompetitive effects that plaintiff alleges would otherwise result from Computer Associates' proposed acquisition of Platinum. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Platinum Assets to be divested be maintained as an independent, economically viable, ongoing business concern during the pendency of the divestiture.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall abide by and comply with all provisions of this Hold Separate Stipulation and Order, pending the Order's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the Order, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Hold Separate Stipulation and Order as though the same were in full force and effect as an order of the Court.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event: (1) The United States has withdrawn its consent, as provided in Section IV.A. above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

V. Consent to Amendment

A. Contemporaneously with the acceptance for payment of the tendered shares of Platinum by Computer Associates, Computer Associates shall convey to CIMS Lab, Inc. all of its rights, titles and interests in the CIMS product line, which includes CIMS MVS Resource Accounting Systems; CIMS UNIX/NT; CIMS MVS Capacity Planner; CIMS VSE; CIMS VMS; CIMS Desktop; CIMS Report Writer (Spectrum Writer); and all products related to any of the foregoing (collectively, the ''CIMS product line''). Such conveyance shall be pursuant to contracts and licenses executed prior to the filing of the Complaint in this matter and approved by plaintiff, in its sole discretion.

B. If defendants do not effectuate the conveyance of the CIMS product line at the time and in the manner specified in Section V.A. above, defendants consent:

(1) To the filing of an Amended Complaint by the United States in this matter adding allegations relating to the product markets in which the CIMS product line is developed, marketed and sold, and such other allegations relating to the CIMS product line as plaintiff in its sole discretion deems necessary to effectuate full relief as regards the CIMS product line;

(2) To the filing of a proposed Amended Final Judgment in this matter adding the CIMS product line to the definition of ''Divested Product'' contained in Section II.E., and such other amendments to the proposed Amended Final Judgment as plaintiff in its sole discretion deems necessary to effectuate full relief as regards the CIMS product line;

(3) That the CIMS product line shall be incorporated within the definition of ''Divested Product'' contained in Section I.E. of this Hold Separate Stipulation and Order; and

(4) To be bound as fully in regards to the CIMS product line as defendants are regarding any other Divested Product presently incorporated in this Hold Separate Stipulation and Order and the proposed Final Judgment attached hereto.

VI. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall use all reasonable efforts to preserve, maintain, and to the maximum extent feasible operate the Platinum Assets as an independent competitor with management, research, development, and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the development, production, marketing or sale of Divested Products with defendants' other operations. Within ten (10) calendar days of the filing of the Complaint in this matter, defendants will inform plaintiff of the steps taken to comply with this Hold Separate Stipulation and Order.

B. Within ten (10) days of the filing of the Complaint, defendants shall take all reasonable steps necessary to ensure: (1) That the Platinum Assets will be maintained and operated as an independent, ongoing and economically viable competitor in the development, production, marketing and sale of the Divested Products; (2) that management will be provided for the Platinum Assets that is separate from the management of defendants' other operations; (3) that the management of the Platinum Assets will not be influenced by defendants; and (4) that the books, records, competitively sensitive sales, marketing and pricing information, and decisionmaking associated with the Platinum Assets will to the maximum extent feasible be kept separate and apart from the defendants' other operations. The defendants' influence over the Platinum Assets shall be limited to that necessary to carry out defendants' obligations under this Stipulation and Order and the Final Judgment. Defendants shall receive all historical, aggregate financial information relating to the Platinum Assets only to the extent necessary to allow defendants to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports. Nothing herein shall preclude defendants from examining any and all agreements acquired from Platinum and administering all such agreements.

C. Except as is provided in this Hold Separate Stipulation and Order or is otherwise reasonably necessary to conduct the business of Platinum as it relates to products and services other than the Divested Products, defendants shall not collect or solicit competitively sensitive or other confidential information relating to the operations of the Platinum Assets from: (1) Information that currently is within the possession, custody or control of Platinum, (2) any current Platinum director, officer, manger, employee or other agent or (3) any former Platinum director, officer, manager, employee, or other agent who currently is subject to a nondisclosure agreement with

Platinum. All nondisclosure agreements to which Platinum is a party will continue in effect as to any information that relates to the Platinum Assets as if Computer Associates' proposed acquisition of Platinum did not occur, and the defendants will notify all of Platinum's employees as to their continuing obligations under such agreements. Information pertaining to the Platinum Assets that Computer Associates has obtained pursuant to its due diligence of Platinum of the extent feasible shall be segregated from the defendants' other information, kept confidential and not used by the defendants. Any nondisclosure agreements pursuant to which any information was collected during any due diligence review inspection will remain in effect as to any information that relates to the Platinum Assets as if Computer Associates' proposed acquisition of Platinum did not occur, and the defendants will notify all persons who received any due diligence information as to their continuing obligations under such agreements.

D. Defendants shall use all reasonable efforts to: (1) Maintain or increase the current sales of the Divested Products, and (2) maintain at current or previously approved levels, whichever are higher, internal research and development funding (including, but not limited to, any funding or approved funding for obtaining or assuring Year 2000 compliance), promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divested Products.

E. Defendants shall provide and maintain sufficient working capital or other financial resources to maintain the Platinum Assets as an economically viable, ongoing business.

F. Defendants shall maintain in operable condition the development facilities for any of the Divested Products at no lower than the current level of equipment.

G. Defendants shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any of the Platinum Assets.

H. Until such time as the Platinum Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who: (1) As of the date Computer Associates announced its proposed acquisition of Platinum, worked primarily on the Divested Products, or (2) is a member of management to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order.

I. The management for the Platinum Assets to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order shall be appointed by defendants, subject to plaintiff's approval, within two (2) business days following the filing of the Complaint. Until such time as the Platinum Assets are divested, the management for the Platinum Assets to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order shall have complete managerial responsibility for the Platinum Assets, subject to the provisions of this Order and the Final Judgment. In the event that any member of the management is unable to perform his or her duties, defendants shall appoint, subject to plaintiff's approval, a replacement acceptable to plaintiff within ten (10) working days. Should defendants fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement. Within ten (10) days following the filing of the Complaint, and for thirty (30) consecutive days thereafter, for each of the Divested Products, management of the Platinum Assets shall post on the Platinum web site a notice that includes on the first page of the web site a summary heading with a link to the full notice. The notice must include text to which the plaintiff has agreed and shall explain that the Platinum Assets will be divested to a purchaser approved by the United States, explain how the Platinum Assets will be managed and operated pending consummation of the required divestiture, and assure customers that they will receive continuing maintenance and product support for the Divested Products pending consummation of the required divestiture.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a purchaser acceptable to plaintiff.

K. This Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court.

Respectfully submitted, For Plaintiff United States of America:

N. Scott Sacks,

DC Bar #913087.

Kent Brown,

VA Bar #18300, Attorneys, Antitrust Division, Computers & Finance Section, U.S. Department of Justice, 600 E. Street, NW, Suite 9500, Washington, DC 20530, (202) 307–6200.

For Defendants, Computer Associates International, Inc.:

Richard L. Rosen,

DC Bar #307231, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004–1202, (202) 942–5000.

For Defendant, PLATINUM Technology International, Inc.:

Larry S. Freedman,

IL Bar #6198768, Senior Vice President and General Counsel, 1815 South Meyers Road, Oakbrook Terrace, Illinois 60181–5241, (630) 620–5000.

Dated: May 25, 1999.

Order

It is so ordered, this ____ day of _____, 1999.

_____

United States District Court Judge.

Exhibit A

United States of America, Plaintiff, v. Computer Associates International, Inc. and PLATINUM Technology International, Inc., Defendants.

[Civil Action No. 1:99CV01318; Judge: Gladys Kessler, Deck Type: Antitrust, Date Stamp: _____]

Amended Final Judgment

WHEREAS, plaintiff, the United States of America, having filed its Complaint in this action on May 25, 1999, and having filed amendments to the Complaint on June 8, 1999 (hereinafter the Complaint and the amendments to the Complaint are referred to collectively as ''Complaint''), and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Amended Final Judgment without trial or adjudication of any issue of fact or law herein, and with this Amended Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein, and that this Amended Final Judgment shall settle all claims made by the plaintiff in its Complaint;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Amended Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Amended Final Judgment is the prompt and certain divestiture of the identified software and associated assets to assure

that competition is not substantially lessened;

AND WHEREAS, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

AND WHEREAS, plaintiff currently believes that entry of this Amended Final Judgment is in the public interest;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. Venue is proper in this Court. The Complain states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Amended Final Judgment:

A. ''Computer Associates'' means defendant Computer Associates International, Inc., a Delaware corporation with its headquarters in Islandia, New York, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''Platinum'' means defendant PLATINUM technology International, inc., a Delaware corporation with its headquarters in Oakbrook Terrace, Illinois, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Defendants'' means, collectively or individually as the context requires, Computer Associates and/or Platinum.

D. ''Acquirer'' means acquirer of any of the Platinum Assets ordered to be divested by Section IV.A of this Amended Final Judgment.

E. ''Divested Product'' means each of the following software products supplied by Platinum for use with OS/390 or MVS mainframe operating system: (a) AutoSys/Zeke (formerly Altai's Zeke), (b) AutoRerun (formerly Altai's Zebb), (c) AutoMedia (formerly Altai's Zara), (d) CCC/Life Cycle Manager; each of the following software products supplied by Platinum for use with the VSE mainframe operating system, (e) AutoSys/Zeke (formerly Altai's Zeke), and (f) AutoAction (formerly Altai's Zack); and (g) the ''CIMS product line,'' which includes CIMS MVS Resource Accounting System; CIMS UNIX/NT; CIMS MVS Capacity Planner; CIMS VSE; CIMS VMS; CIMS Desktop; CIMS Report Writer (spectrum Writer); and all products related to any of the foregoing products in the CIMS product line. With respect to each of the foregoing, a Divested Product includes each predecessor version of the product and each version that has been or is currently under development or that has been developed but has not been sold or distributed. Any divestiture of Platinum's rights, titles and interests in the CIMS product line, pursuant to Section IV of this Amended Final Judgment, shall be subject to any rights held by CIMS Inc. as a result of the CIMS Distribution and Licensing Agreement, dated as of February 21, 1999, between PLATINUM technology IP, inc. and CIMS Inc.

F. ''Platinum Assets'' means all tangible and intangible property or property rights owned or licensed by Platinum and reasonable required in developing, testing, producing, marketing, licensing, selling, or distributing any Divested Product, or in supplying any support or maintenance services for any Divested Product. The Platinum Assets include all of Platinum's rights, titles and interests in any asset which Platinum has the right to convey, license, sublicense or assign. If Platinum's rights in any Platinum Asset are licensed under terms that would prevent it from conveying, licensing, sublicensing or assigning such rights to an Acquirer, defendants shall take no action (such as asserting or enforcing any exclusive rights included in Platinum's license of its rights to the asset) to bar the licensor of such asset from licensing rights in the asset to an Acquirer for use with any Divested Product, and defendants shall take all reasonable steps (including, but not limited to, promptly executing necessary documents or agreements with such licensor) to cooperate with and assist an Acquirer in obtaining such a license, provided, however, that nothing contained herein shall prevent defendants from asserting or enforcing any exclusive rights possessed by Platinum to prevent an Acquirer from using such licensed assets other than with a Divested Product. The Platinum Assets include, but are not limited to:

(1) Each Divested Product;

(2) All source code and object code for the version or versions or a Divested Product currently being sold or distributed anywhere in the world (including patches), all existing source code and object code for all prior versions previously sold or distributed anywhere in the world (including patches), and all other source code and object code for all versions of a Divested Product under development or developed but not yet being sold or distributed (including patches). Defendants shall not retain copies of any of the foregoing code, provided however, that to the extent at the time Computer Associates announced its proposed acquisition of Platinum any such code was also contained in Platinum products other than Divested Products (''retained code'') defendants shall retain a perpetual, irrevocable, fully paid-up worldwide license to retain and use such retained code in any products that are not Divested Products, except that defendants shall not use such retained code to develop a product that is substantially identical to a Divested Product or that competes in any market described in the Complaint. This Amended Final Judgment imposes no restrictions on defendants with respect to products, or source and object code for such products, owned or controlled by Computer Associates at the time Computer Associates announced its proposed acquisition of Platinum;

(3) All software customizations, optional modules and add-ons for a Divested Product;

(4) All development tools, development environments, proprietary programming languages, know-how, designs, drawings, specifications, research data, trade secrets, copyrights, rights under patents, and all other intellectual property which Platinum has used to develop, upgrade, or maintain a Divested Product;

(5) All software program, instructions, manuals, know-how, trade secrets, or documentation that Platinum has used or supplied to a user of Divested Product to facilitate installation or operation of any Divested Product, or to facilitate migration or conversion to the use of any Divested Product from the use of any other product;

(6) All technical or development documentation, and all marketing information, sales training materials, sales collateral, customer lists and credit reports and maintenance documentation used for a Divested Product;

(7) Assignment of license or maintenance agreements including a Divested Product. In the event any such license or maintenance agreement includes any products or services other than a Divested Product, defendants or

such other persons holding ownership rights to such other products or services shall retain all contractual rights relating to such other products or services;

(8) With respect to all assigned licenses and maintenance agreements identified in Subsection II.F.(7) above, a sum of money equal to the pro rata amount of all maintenance fees for a Divested Product (except the CIMS product line) already paid to defendants pursuant to such maintenance agreements to the extent such fees paid relate to service periods after their date of such assignment. With respect to all such assigned licenses and maintenance agreements that include any products or services other than a Divested Product, the maintenance fees to be attributed to a Divested Product shall be calculated on a pro rata basis by apportioning the maintenance fees among the products and services subjects to such agreements in a ratio derived from the list price of each product or service as of the date upon which such license and maintenance agreement became effective to the total of such list prices for all the products and services subject to such agreements. For any multi-year agreement assigned, the allocation described herein applies only to that portion of revenues attributable to maintenance fees. Defendants shall not allocate nor shall any Acquire be entitled to receive any portion of revenues attributable to licensing of a Divested Product. This method of allocation of maintenance fees applies to both the allocation of maintenances fees already paid to defendants and payable in the future relating to service periods after the date of such assignment;

(9) All files and records maintained by Platinum for any customer licensee of any Divested Product, including customer licenses, maintenance agreements, and other agreements, all customer call reports (or portions thereof relating to any Divested Product), pricing information for the Divested Products, support and maintenance logs for the Divested Products; all customer leads, customer pipeline reports, customer proposals or other formation maintained by defendants to license and support any Divested Product. Where any such information relates to both a Divested Product and other products and services, defendants shall use their best efforts to segregate the information that relates to the Divested Products and shall provide, and shall not retain, such segregated information to the Acquire; and

(10) The trademarks or pending trademarks ''Zeke'', ''Zebb'', ''Zara'', ''Zack'', ''AutoRerun'', ''AutoMedia'', ''CIMS Capacity Panner'', ''CIMS Chargeback'', and ''CIMS+'', and for a period of eighteen (18) months from the time the Acquire purchases the Divested Product, the Acquire of AutoSys/Zeke may use the phrase ''formerly known as AutoSys/Zeke'' in connection with the marketing, sale, or distribution of the Divested Product; the Acquire of AutoAction for VSE may use the phrase ''formerly known as AutoAction for VSE'' in connection with the marketing, sale, or distribution of that Divested Product; the Acquire of CCC/Life Cycle Manager may use the phrases ''formerly known as CCC/Life Cycle Manager'' and ''formerly known as CCC/LCM'' in connection with the marketing, sale or distribution of that divested Product, and thereafter, defendants will not object to the Acquirer's use of ''Life Cycle Manager'' or ''LCM''.

III. Applicability

A. The provisions of this Amended Final Judgment apply to defendants, their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Amended Final Judgment by personal service or otherwise. Defendants and each person bound by this Amended Final Judgment shall cooperate in ensuring that the provisions of this Amended Final Judgment are carried out.

B. The Trustee appointed pursuant to Section IV of this Amended Final Judgment shall require, as a condition of the divestiture of the Platinum Assets required herein, that each Acquirer agree to be bound by the provisions of this Amended Final Judgment.

IV. Divestiture by Trustee

A. Defendants are hereby ordered to divest the Platinum Assets to an Acquirer approved by the plaintiff in accordance with the terms of this Amended Final Judgment. Divestiture shall be accomplished by a trustee to be selected by plaintiff at its sole discretion. Defendants shall not object to the selection of the trustee on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after plaintiff notifies defendants of the trustee's selection.

B. Only the trustee shall have the right to divest the Platinum Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon all reasonable efforts of the trustee, subject to the provisions of this Amended Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall the Platinum Assets in the manner that is most conducive to preserving and maintaining competition that currently exists between Computer Associates and Platinum in the markets for the development, sale and maintenance of the mainframe software products described in the Complaint. Subject to Section IV.C. of this Amended Final Judgment, the Trustee shall have the power and authority to hire at the cost and expense of Computer Associates any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professional and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, and shall have such other powers as this Court shall deem appropriate.

C. The trustee shall serve at the cost and expense of Computer Associates, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Computer Associates and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which divestiture is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Platinum Assets, and shall assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities for the Platinum Assets, and to Platinum's overall businesses as is reasonably necessary to effectuate the divestiture. Defendants shall provide financial or other information relevant to the Platinum Assets customarily provided in a due diligence process as

the trust may reasonably request, subject to customary confidentiality assurances. Subject to customary confidentiality assurances, defendants shall permit prospective acquirers of any Platinum Assets to have reasonable access to the information provided to the trustee and to management personnel for the Platinum Assets, and to make inspection of any physical facilities for the Platinum Assets.

E. After the trustee's appointment, the trustee shall confer regularly with designated representatives of the parties and shall file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Amended Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding period, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. Any proposed divestiture of any of the Platinum Assets shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Platinum Assets can and will be used by the Acquirer as part of a viable, ongoing business involving the sale or license of the Divested Products to customers, including a demonstration to plaintiff's satisfaction that: (1) The divestiture is for the purpose of competing effectively in the selling of the Divested Products to customers; (2) the Acquirer has the managerial, operational, technical and financial capability and intent to compete effectively in the selling of the Divested Products to customers; and (3) none of the terms of any divestiture agreement gives defendants the ability artificially to raise the Acquirer's costs, impairs the Acquirer's ability to maintain or innovate with respect to any of the Divested Products, impairs the Acquirer's ability to support customers, or otherwise interferes with the ability of the Acquirer to compete effectively. Plaintiff may object to a proposed divestiture in the manner prescribed in Section VI of this Amended Final Judgment. Defendants shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants shall be made in the manner prescribed in Section VI of this Amended Final Judgment.

G. If the trustee has not accomplished such divestitures within one hundred and twenty (120) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations for completing the required divestiture; provided, however, that to the extent such report contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. No less than three (3) days prior to filing such report with the Court, the trustee shall furnish a copy of such report to the parties. Upon the filing of such report with the Court, each party shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by plaintiff, or entering an order divesting any or all of the Platinum Assets to such Acquirer and upon such terms as the Court deems appropriate.

V. Divestiture Agreement

Any agreement for divestiture of the Platinum Assets shall, at minimum, convey the following:

A. All of Platinum's rights, titles and interests in all the Platinum Assets (subject to Subsection V.E. below and subject to any limitations on defendants' ability to convey, license, sublicense or assign any such rights, as described in Subsection II.F. above).

B. The full and complete assignment of rights under all customer licenses and maintenance agreements for the Divested Products, subject to pro-rated allocation of maintenance revenue as specified in Subsection II.F.(8) above; provided however, that in the event any such licenses or maintenance agreements also encompass other products or services, Acquirer shall not be entitled to receive any rights with respect to such other products or services.

C. The right to obtain the interface information relating to the integration of AutoSys/Zeke and AutoSys as it exists as of the date of the filing of the Complaint; and in the event interface information relating to any existing or future version of AutoSys under any name is made available to any software developer or vendor, the right to obtain such information by the same means and on the same terms and to the same extent as it is made available to such other software developer or vendor. No non-competition clause in or ancillary to any provision of such interface information that may impair the Acquirer's ability effectively to compete with defendants shall be enforceable in any court, except defendants may restrict the use of such interface information to establishing an interface between current and future versions of AutoSys/Zeke and current and future versions of AutoSys.

D. The right to negotiate, without interference by defendants, for the employment services of any of Platinum's employees who, prior to the announcement of the subject acquisition, had employment responsibilities relating to the Divested Products. If the Acquirer employs any such person, any employment-related non-competition clause, as it relates to the Divested Products, that runs in favor of defendants shall be unenforceable by defendants in any court, except for the persons identified on Exhibit 1 to the Amended Final Judgment, which is filed under seal.

E. At Acquirer's option, any tangible assets that are used in conjunction with the development, support or maintenance of the Divested Products, excluding defendants' interests in real property, fixtures and leases and shared equipment.

F. Such usual and customary warranties as are necessary to effect the purposes of the trust.

VI. Notification

Two (2) days before proposing any divestiture, the trustee shall notify plaintiff and defendants of the proposed divestiture and proposed terms and conditions thereof. Defendants shall, within two (2) days after receiving such notice, have an opportunity to confer with the trustee and Acquirer, to state their opposition to terms and conditions that they consider to be inconsistent with this Amended Final Judgment, and to make such recommendations as to different or additional terms and conditions that they believe are consistent with this Amended Final Judgment. Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Amended Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to this Amended Final Judgment, the trustee shall notify plaintiff and

defendants of the proposed divestiture. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the definitive agreement, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff in its sole discretion may request from defendants, the proposed Acquirer, or any other third party additional information concerning the proposed divestiture and the proposed Acquirer. Defendants and the trustee shall furnish any additional information requested from them within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed Acquirer, and any third party, whichever is later, plaintiff shall provide written notice to defendants and the trustee stating whether or not it objects to the proposed divestiture. Any such notice objecting to a proposed divestiture shall state the reasons therefore. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section IV.F. of this Amended Final Judgment. Upon objection by plaintiff, the divestiture proposed under Section IV shall not be consummated. Any objection by defendants under Section IV.F. of this Amended Final Judgment must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice of execution of a definitive agreement required under this Section VI of this Amended Final Judgment. Upon such objection by defendants, the proposed divestiture shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within ten (10) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps implemented on an on-going basis to preserve the Platinum Assets pursuant to Section VIII of this Amended Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain the Platinum Assets as an active competitor; to maintain at current levels the management, staffing, sales, marketing and pricing of the Platinum Assets; and to commit resources, development and support to the Platinum Assets at a level not materially less than that committed prior to the announcement of Computer Associates' proposed acquisition of Platinum. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within ten (10) calendar days after such change is implemented.

B. Until one year after such divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Platinum Assets and to effect the ordered divestitures.

VIII. Hold Separate Order

Until the divestitures required by the Amended Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Platinum Assets.

IX. Financing

Computer Associates is ordered and directed not to finance all or any part of any divestiture to any person made pursuant to this Amended Final Judgment, or to enter into any agreement requiring or permitting the reporting to defendants of sales units or revenues of the products included in the Platinum Assets by the Acquirer or the payment of continuing royalties to defendants by the Acquirer.

X. Compliance Inspection

For purposes of determining or securing compliance with the Amended Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Amended Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview informally or to dispose under oath and on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Amended Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grant jury proceedings), or for the purpose of securing compliance with this Amended Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules to Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties of this Amended Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Amended Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Amended Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Amended Final Judgment is in the public interest.

Dated: _____.

_____

United States District Judge.

Documents Under Seal

United States of America, Plaintiff, v. Computer Associates International, Inc. and Platinum Technology International, Inc., Defendants.

[Civil Action No. 1:99CV01318; Judge: Gladys Kessler, Deck Type: Antitrust, Date Stamp: _____]

Exhibit One to Proposed Amended Final Judgment, Pursuant to Order To Place Exhibit One to Final Judgment Under Seal

Order Entered May 27, 1999

Order To Substitute Amended Final Judgment

The Court ORDERS as follows:

The proposed Amended Final Judgment filed by the United States as Exhibit A to the Uncontested Motion to Substitute Amended Final Judgment shall replace and supersede for all purposes the proposed Final Judgment attached as Exhibit A to the Hold Separate Stipulation and Order filed by the parties on May 25, 1999, and entered by the Court on May 26, 1999;

PROVIDED, HOWEVER, THAT the document filed as Exhibit 1 to the aforementioned proposed Final Judgment that was placed under seal by the Clerk of the Court pursuant to the Court's Order to Place Exhibit One to Final Judgment Under Seal, entered on May 27, 1999, shall remain under seal and in effect as Exhibit 1 to the proposed Amended Final Judgment.

Dated: _____.

_____

United States District Judge.

United States of America, Plaintiff, v. Computer Associates International, Inc. and PLATINUM Technology International, Inc., Defendants.

[Civil Action No. 1:99CV01318; Judge Gladys Kessler, Deck Type: Antitrust, Date Stamp: _____]

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Amended Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 25, 1999 the United States filed a civil antitrust Complaint, and on June 8, 1999, the United States filed amendments to the Complaint (hereinafter the Complaint and the amendments to the Complaint will be referred to collectively as ''Complaint, as amended''). The Complaint, as amended, alleges that the proposed acquisition by Computer Associates International, Inc. (''CA'') of PLATINUM Technology International, Inc. (''Platinum'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. CA is the document competitor with market shares of 70% or more in a number of mainframe systems management software products for the MVS (now named OS/390) and VSE operating systems that run on IBM and IBM-compatible mainframe computers. Platinum is either the only substantial competitor or is among the most significant of a very few competitors attempting to challenge CA's dominance in the sale of these mainframe systems management software products. Platinum has aggressively marketed its products to CA's customers by offering better pricing and more responsive customer service.

The Complaint, as amended, alleges that the acquisition would eliminate substantial competition, and result in higher prices, lower quality product support, and less innovation, in seven product markets for systems management software used with mainframe computers: MVS (OS/390) job scheduling and rerun software; MVS (OS/390) tape management software; MVS (OS/390) change management software, MVS (OS390) job accounting and chargeback software, VSE job scheduling and rerun software; VSE automated operations software, and VSE job accounting and chargeback software. The Complaint, as amended, seeks adjudication that CA's acquisition of Platinum would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and requests that the Court grant preliminary and permanent injunctive relief, and such other relief as the Court deems appropriate.

Simultaneously with the filing of the amendments to the Complaint, the United States filed the proposed Amended Final Judgment. At the time the original Complaint was filed on May 25, 1999, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order (''Hold Separate''); the Court entered the Hold Separate on May 26, 1999. The proposed Amended Final Judgment that is the subject of this Competitive Impact Statement supercedes the initial proposed Final Judgment and provides for relief in all of the markets that are the subject of allegations in the Complaint, as amended.

Prior to the announcement of CA's proposed acquisition of Platinum, Platinum granted to another firm, CIMS Inc., an exclusive license, together with an option to purchase, certain products, collectively known as the ''CIMS product line,'' that Platinum had developed, marketed and sold in the markets for MVS (OS/390) job accounting and chargeback software and VSE job accounting and chargeback software. The defendants proposed to complete the divestiture of the CIMS product line by conveying to CIMS Inc. all of Platinum's remaining rights, titles, and interests in the CIMS product line in a ''fix-it-first'' transaction to be approved by the United States and to be consummated contemporaneously with CA's acceptance for payment of the tendered shares of Platinum. Because such a conveyance would have resolved any competitive problems that would otherwise arise if CA were to acquire the CIMS product line, the original Complaint did not contain allegations pertaining to the effect of the proposed acquisition in the markets for MVS (OS/390) job accounting and chargeback software and VSE job accounting and chargeback software. However, the United States insisted and defendants agreed in the Hold Separate that the United States could amend the Complaint and file a proposed Amended Final Judgment if the defendants were unable to convey the CIMS product line in the manner described above. The parties agreed that an amended Complaint would add allegations in the product markets in which the CIMS product line is developed, marketed and sold and an Amended Final Judgment would add the CIMS product line to the group of products to be divested and such additional provisions as the United States deems necessary to obtain relief from the additional violations alleged in the amended Complaint.

On May 28, 1999, subsequent to the filing of the original Complaint, CA announced the expiration of its tender offer for Platinum shares and acceptance for payment of all validly tendered shares, but the defendants failed to make the requisite conveyance of the CIMS product line. The United States therefore filed its amendments to the Complaint on June 8, 1999, adding allegations pertaining to the markets for MVS (OS/390) job accounting and

chargeback software and VSE job accounting and chargeback software.

The proposed Amended Final Judgment is designed to eliminate the anticompetitive effects of CA's acquisition of Platinum, and requires the defendants to divest, through a trustee to be appointed by the United States, Platinum's products in the seven mainframe systems management software product markets named in the Complaint, as amended (''Divested Products''), together with certain related assets (collectively, the ''Platinum Assets''). The defendants are required to assist the trustee in accomplishing the required divestitures and may not impede or interfere with the trustee's work. If the trustee is unable to complete the required divestitures within 120 days after appointment, the Court is authorized to enter such orders as it shall deem appropriate to carry out the purpose of the trust, which may, if necessary, include extending the trustee's appointment by a period requested by the United States, or directly ordering the divestiture of the Platinum Assets on such terms as the Court deems appropriate.

The Hold Separate includes a stipulation by the United States and the defendants that the proposed Amended Final Judgment may be entered after compliance with the APPA. The Hold Separate also obligates the defendants to comply with the terms of the proposed Amended Final Judgment until it is entered by the Court, or until all appeals have been completed stemming from any court ruling declining entry of the proposed Amended Final Judgment. Until all divestitures have been completed, the Hold Separate specifies that the defendants will take certain steps to ensure that the Platinum Assets will be held and operated separate and part from the defendants' and assets and businesses. The defendants must appoint an interim, separate and independent management acceptable to the United States to manage the business operations relating the Platinum Assets until the divestitures have been completed. Confidential business information relating to the Platinum Assets will, to the maximum extent feasible, be screened from the defendants. The defendants must maintain promotional and sales efforts, development funding, and technical support for the Divested Products. In particular, the defendants are required to maintain at current or previously approved levels, whichever are higher, research and development funding for the Divested Products and to continue to serve the needs of existing customers. The purpose of these interim steps is to ensure that the Platinum Assets will continue to be maintained and operated, until the divestitures are completed, as an independent, ongoing and economically viable concern, free from defendants' control and influence.

Entry of the proposed Amended Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Amended Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

CA is a Delaware corporation with its principal place of business in Islandia, New York. In its 1998 fiscal year, CA had revenues in excess of $4.7 billion and net profits of $1.17 billion. CA produces and markets software for a variety of computers and operating systems, including systems management software for mainframe computers running the two most popular operating systems, IBM's MVS (now renamed ''OS/390'' by IBM), and VSE operating systems. Aside from IBM, which writes the operating system software that runs almost all mainframe computers, CA is the largest vendor of software for IBM and IBM-compatible mainframe computers. CA is also a significant vendor of systems management software and other software for computers and computer networks running UNIX or Windows NT (recently renamed Windows 2000) operating systems.

Platinum is a Delaware corporation with its principal place of business in Oakbrook Terrace, Illinois. Platinum's fiscal year 1998 revenues exceeded $968 million. Platinum sells a variety of computer software and related services for mainframe, UNIX, and Windows NT computer systems and is also a leading vendor of systems management software for IMB and IMB-compatible mainframe computers.

On March 31, 1999, CA filed with the United States a premerger notification stating that it had entered into a definitive agreement with Platinum to purchase all issued and outstanding shares of Platinum's common stock through a $3.5 billion cash tender offer. CA announced on May 28, 1999, that it had accepted for payment all validly tendered shares, which comprise about 98% of Platinum's outstanding common stock. This acquisition forms the basis of the government's suit.

B. Mainframe Systems Management Software

Mainframe computers are the large and powerful computers used by industrial, commercial, educational, and governmental enterprises for large scale data processing applications. Mainframe computers provide unique storage, throughput, and security features and functions that make them superior data processing devices for large corporate and institutional computer users throughout the world.

An operating system is software that controls the operational resources of the computer (including the central processor unit, memory, data storage devices, and other hardware components) and allows ''applications'' software (programs that perform user-directed tasks requested of the computer, such as programs that perform transactions or maintain payroll, inventory, sales, and other business accounts of a company) to run on the computer. The vast majority of the world's mainframe computers run with operating systems developed by IBM, of which the two most widely used are the MVS (OS/390) and VSE operating systems. MVS (OS/390) is generally used by users of larger mainframes and those needing the highest levels of performance and functionality. VSE is a significantly less costly operating system that has less capability and fewer features. VSE is a significantly less costly operating system that has less capability and fewer features. VSE is generally used with smaller mainframes, with fewer users and smaller data sets.

Systems management software is used to help manage, control, or enhance the performance of mainframe computers. While IBM's mainframe operating systems contain some limited systems management capabilities, separate systems management software programs such as the products offered by CA and Platinum provide additional functionality that is demanded by most mainframe users. Mainframe systems management software generally is designed to function only with a specific operating system. Therefore, users of MVS (OS/390) must purchase systems management software designed specifically for that operating system, while VSE users are limited to buying systems management software designed for the VSE operating system. Users generally cannot switch between the MVS (OS/390) and VSE operating systems without facing very substantial costs. Therefore, customers using one mainframe operating system are unlikely to switch to another to escape

even a very substantial increase in price of the systems management software on their present mainframe operating system platform.

In recent years, some mainframe computer systems users have transferred applications from their mainframes to distributed client/server computing environments. However, most users continue to remain highly dependent on their mainframe computers for other ''mission-critical'' business applications which cannot be switched at all or in an economically viable manner. Moreover, conversion of applications from mainframe to distributed client/server computing environments entails substantial costs and time, is generally disruptive of business operations and is fraught with risks. The cost of the mainframe systems management software that is the subject of the violation alleged in the Complaint, as amended, constitutes only a small portion of the overall operating costs of a mainframe computer system. Therefore, users would not switch from mainframe computer systems to distributed client/server computing systems to escape even a very substantial increase in the price of these mainframe systems management software products.

CA and Platinum both develop and sell a variety of mainframe computer systems management software products and are direct competitors in the development and sale to mainframe users of each of the products that is the subject of the violation alleged in the Complaint, as amended, and described below. Each specific product or product combination solves particular problems or meets specific needs of mainframe users, and users cannot economically switch to different products to obtain the same functionality.

(1) Job scheduling and rerun software for the MVS (OS/390) operating system. Job scheduling and rerun software directs a mainframe to prioritize and run particular ''batch'' processing operations (called ''jobs'') based on user requirements as to time, date, and other parameters, to link jobs together so that they are performed in the correct sequence, and to organize the results of these jobs. Rerun software interfaces with the job scheduler and automatically collects the data on jobs that were not operated successfully and performs the necessary remedial operations and reruns the job or alerts the operator that intervention is necessary. Rerun software is almost always sold to those users who need it for use together with the specific job scheduling software product for which it was designed to inter operate.

(2) Job scheduling and rerun software for VSE operating system. These VSE products perform essentially the same functions as MVS (OS/390) job scheduling software.

(3) Tape management software for the MVS (OS/390) operating system. Tape management software is used to control the cataloguing, loading, formatting, and reading of the magnetic tapes used for archival storage of data processed by mainframes. Many mainframe computer system users store information on hundreds or thousands of tapes, and tape management software specifies which tapes, and which information on the tapes, need to be loaded for particular operations. Tape management software also protects the information on the tape by ensuring that active information is not overwritten or erased.

(4) Change management software for the MVS (OS/390) operating system. Change software tracks, manages, and archives versions of computer programs while those programs are being developed, modified, and tested. It also helps to control the versions of the programs as they are used in normal business activities by the customer, when there may be a need to modify, repair, or update the programs, or to uninstall the programs and reinstall a prior version that is known to work.

(5) Automated operations software for the VSE operating system. Automated operations software is used to automate computer management to reduce human interaction with the system and thereby improve efficiency and minimize errors. Among the functions of automated operations software is automating computer console operations, message and error handling, and enabling systems management from remote locations or computers.

(6) MVS and OS/390 job accounting and chargeback software. Job accounting and chargeback software monitors the use of computer resources so that computer resource costs may be allocated and charged among internal corporate divisions and/or third party client users. The software collects data that shows which computer resources were being by whom, when, and for how long. This data is then used to measure, allocate and charge shared costs to internal corporate divisions and/or third party client users. Job accounting and chargeback software, including such software sold by CA and Platinum, is often combined with a capacity planning software feature, which uses the data compiled by the job accounting and chargeback software to report on measures such as system response performance, system availability, resource utilization, and future utilization projections.

(7) VSE job accounting and chargeback software. These VSE products perform essentially the same functions as MVS and OS/390 job accounting and chargeback software.

Even substantial price increases for the software products described above would not cause users to switch to any other types of mainframe software products or software products for different operating systems. Each of the systems management products for each operating system, therefore, constitutes a separate relevant product market in which to assess the competitive effects of CA's acquisition of Platinum. Vendors sell these products to customers located throughout the United States, and for each of the product markets, the United States constitutes a relevant geographic market in which to assess the competitive effects of the proposed acquisition.

D. Competition Between CA and Platinum

CA and Platinum compete against each other for sales of the above-described MVS (OS/390) and VSE systems management software products throughout the United States. They compete with respect to license royalties they charge users of systems management products and the flexibility of the license terms they offer. Both firms market their products under license that require royalty payments for the right to use the product and payments for maintenance of and upgrades to the products.

Moreover, CA and Platinum compete in providing product support and service to their customers. Due to the ''mission-critical'' nature of the work done with mainframe computers, users highly value the speed and effectiveness of a vendor's installation, maintenance, and technical support of systems management products. CA and Platinum also compete to improve, upgrade, and enhance their systems management products, both in terms of developing products of greater performance or functionality and in terms of improving operability so that the products become easier to install, use, and maintain.

In addition to competition for new users, substantial competition in the markets for these mainframe systems management software products primarily occurs when current users, and particularly current users of CA's products, consider whether they should convert to a different product. Platinum has aggressively marketed its products in competition with CA by offering better pricing, more responsive

customer services, and improved product features. Because conversion from one product to another product is costly, difficult, time-consuming, and potentially disruptive to a firm's ongoing mainframe computer operations and overall business, most users are relevant to incur the costs and risks of switching. In particular, Platinum has invested significant resources in demonstrating that, notwithstanding the costs and risks of conversion, Platinum's products are superior alternatives for current users of CA's products. This competition from Platinum has caused CA to respond with lower prices, better service, and improved product features for its own products.

E. Anticompetitive Consequences of the Acquisition

The Complaint, as amended, alleges that CA's acquisition of Platinum would substantially lessen competition in each of the markets of the systems management software products described above. The combined annual U.S. sales of all competitors in the relevant product markets exceed $590 million. Each of the relevant markets already is highly concentrated, and the acquisition would substantially increase concentration. In each market, CA already has a dominant share of 70% to 90%. Platinum is the only substantial competitor or among the most significant of only a few competitors in these markets.

The Complaint, as amended, alleges that in the markets for each of the products described above, the reduction or elimination of competition from CA's acquisition of Platinum would likely lead to higher prices, lower levels of product service and support, and a lessening of product innovations and development. The Complaint, as amended, further alleges that the competitive harm resulting from the acquisition is not likely to be mitigated by the possibility of new entry. Entry into any of the markets would entail expenditures of substantial costs and time for the development of a competitive product that would be acceptable to mainframe customers. A new entrant would also be required to invest significant time and resources to develop a reputation as a reliable vendor of these products to attract significant sales in what are substantially product replacement markets. Such entry would not be timely, likely, or sufficient in scale to counteract or deter a price increase or a reduction in service or product quality in any of the relevant markets.

III. Explanation of the Proposed Amended Final Judgment

The proposed Amended Final Judgment is designed to preserve competition in each of the mainframe systems management software markets in which CA's acquisition of Platinum would be anticompetitive. The proposed Amended Final Judgment will remain in effect for ten years and requires CA to divest all of the Platinum Assets through a trustee selected by the United States, and imposes obligations on CA to cooperate in the trustee's sale efforts.

The propose Amended Final Judgment provides that the assets must be divested in such a way as to satisfy the United States that the Platinum Assets can and will be operated by the purchaser or purchasers as part of a viable, ongoing business or businesses that can compete effectively in the selling of the Divested Products. The CIMS product line will be sold subject to any rights in those Divested Products held by CIMS Inc. as a result of the licensing agreement and option to purchase that it obtained from Platinum prior to CA's announcement of its proposed acquisition of Platinum. The proposed Amended Final Judgment provides that CA will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will confer regularly with the parties and file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture. At the end of 120 days, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment or ordering the divestiture of any or all of the Platinum Assets to such purchasers and on such terms as the Court deems appropriate.

The proposed Amended Final Judgment sets forth the minimum assets and rights that must be conveyed in a divestiture. These include requiring the transfer to the purchaser or purchasers of: all of Platinum's transferrable ownership rights in the Divested Products, as well as Platinum's rights in other assets included in the Platinum Assets that are used in conjunction with the development, support or maintenance of the Divested Products; all customer licenses and maintenance agreements for the Divested Products; broad rights to the information necessary to service customers, to interface Platinum's job scheduling products with the Platinum UNIX/NT job scheduling product to be acquired by CA, and generally to compete with CA and other vendors of software products in the markets described above; and the right to negotiate, without interference from CA, for the employment services of the Platinum employees who have job responsibilities relating to the Divested Products.

The proposed Amended Final Judgment also prohibits CA from financing the purchase of the Platinum Assets or entering into continuing royalty payment arrangements with any purchaser of the Divested Products. This provision prevents CA from having a relationship with its new competitor that might impair competition between the new competitor and CA.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Amended Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Amended Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Amended Final Judgment

A. APPA Procedures

The United States and defendants have stipulated that the proposed Amended Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Amended Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Amended Final Judgment within which any person may submit to the United States written comments regarding the proposed Amended Final Judgment. Any person who wishes to comment should do so

within (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Amended Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Nancy M. Goodman, Chief, Computers and Finance Section, Antitrust Division, United States Department of Justice, 600 E Street, N.W., Suite 9500, Washington, DC 20530.

B. The Court's Continuing Jurisdiction

The proposed Amended Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Amended Final Judgment.

VI. Alternatives to the Proposed Amended Final Judgment

The United States considered, as an alternative to the proposed Amended Final Judgment, litigation against defendants CA and Platinum. The United States could have brought suit and sought preliminary and permanent injunctions against CA's acquisition of Platinum. The United States is satisfied, however, that the complete, and irrevocable divestiture of the Platinum Assets to a suitable purchaser and the other relief outlined in the proposed Amended Final Judgment will preserve competition in the relevant mainframe systems management product markets alleged in the Complaint, as amended, that would otherwise have been impaired by the acquisition. The relief specified in the proposed Amended Final Judgment will achieve all of the competitive benefits that the United States could have obtained through protracted litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint, as amended.

VII. Standard of Review Under the APPA for the Proposed Amended Final Judgment

The APPA requires that proposed final judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed final judgment ''is in the public interest.'' In making that determination:

> [T]he court *may* consider—
> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term '' 'public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n,* 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' *Northern Pacific Railway* Co. v. *United States,* 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Amended Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.* 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.,* 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, ''the Court is no where compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States **v.** Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶61.508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* **v.** BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* **v.** Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981). *See also Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

A proposed final judgment is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States **v.** Armour & Co., 402 U.S. 673, 681 (1971).

the proposed Amended Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates

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[1] 119 Cong. Rec. 24598 (1973), *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* **v.** Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* **v.** BNS, Inc., 858 F.2d at 463; *United States* **v.** National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* **v.** Gillette Co., 406 F. Supp. at 716. *See also United States* **v.** American Cyanamid Co., 719 F.2d at 565.

certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[3]

VIII. Determinative Documents

In deciding to consent to the proposed Amended Final Judgment, the United States considered no documents that were determinative within the meaning of the APPA. Consequently, no such documents have been filed with this Competitive Impact Statement.

Dated: June 8, 1999.

Respectfully submitted,

Kent Brown, VA Bar #18300; Kenneth W. Gaul, D.C. Bar #415456; Weeun Wang; Sanford M. Adler; Jeremy W. Eisenberg; Richard Koffman; Melinda Foster; Jeremy Feinstein,

Attorneys, Antitrust Division, U.S. Department of Justice, Computers & Finance Section, Suite 9500, 600 E Street, NW., Washington, DC 20530, (202) 307–6200.

Certificate of Service

The undersigned certifies that she is a paralegal employed by the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on June 8, 1999, she caused true copies of the

1. Amendments to Complaint (together with attached Exhibit)
2. Uncontested Motion to Substitute Amended Final Judgment (together with the attached Exhibit)
3. Competitive Impact Statement

to be served upon the person in the manner stated below:

Counsel for Computer Associates International, Inc. and PLATINUM technology International, Inc.—Richard L. Rosen, Esq., Arnold & Porter, 555 12th Street, NW., Washington, DC 20004.

(by hand delivery)

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC, this 8th day of June 1999.

Joann Maguire.

[FR Doc. 99–15419 Filed 6–16–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1236]

RIN 1121–ZB69

Internet Crimes Against Children Task Force Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of extension of the deadline for applying for discretionary competitive assistance for the Internet Crimes Against Children Task Force Program.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is extending the deadline for applications from State and local law enforcement agencies interested in participating in the Internet Crimes Against Children Task Force (ICAC Task Force) Program. The ICAC Task Force Program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses against children by offenders using online technology.

DATES: The new deadline for applications to be received is Monday, July 19, 1999. (The original deadline was June 21, 1999).

ADDRESSES: Interested applicants must obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org. Copies of the complete program announcement, which appeared in the **Federal Register** on May 7, 1999, 64 FR 24856, are also available from the Juvenile Justice Clearinghouse and on OJJDP's Web site.

FOR FURTHER INFORMATION CONTACT: Michael Medaris, ICAC Task Force Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–8937. [This is not a toll-free number.]

Dated: June 14, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–15456 Filed 6–16–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Snyder Coal Company

[Docket No. M–1999–030–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit: (i) An alternative method of examination and evaluation including a visual examination of each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken just inby the intake portal; (ii) an additional air reading and gas test for methane, carbon dioxide and oxygen deficiency to be taken at the intake air split location(s) just off the slope in the gangway portion of the working section; and (iii) the examiner reading the air and gas test to record the date, time, his/her initials, and the results of the readings at these locations prior to anyone entering the mine. The petitioner states that regardless of conditions found at the section evaluation point, the slope will be traveled and physically examined in its entirety on a monthly basis with the dates, times, and initials placed at sufficient locations, the results of the examination will be maintained on the surface, and all hazards will be corrected prior to transporting personnel into the slope. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Snyder Coal Company

[Docket No. M–1999–031–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4)

[3] *United States* **v.** American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C. 1983), *aff'd sub nom. Maryland* **v.** United States, 460 U.S. 1001 (1983) *quoting United States* **v.** Gillette Co., supra, 406 F. Supp. at 716; *United States* **v.** Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

and (5) (weekly examination) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to: (i) Preshift examine the intake haulage slope and primary escapeway areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake gangway level; (ii) travel and thoroughly examine these areas for hazardous conditions once a month; and (iii) have the examiner place the dates, times, and his/her initials at appropriate locations and maintain records of the examination on the surface. The petitioner states that due to significant fall hazards, it would be unsafe to stop at every ventilation control or opening along the steeply pitching intake haulage and primary escapeway to conduct daily or weekly examinations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Snyder Coal Company

[Docket No. M–1999–032–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails is not practical. The petitioner proposes to have two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Snyder Coal Company

[Docket No. M–1999–033–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1201–1(a) (temporary notations, revisions, and supplements) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to conduct mine surveys and revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Snyder Coal Company

[Docket No. M–1999–034–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Rattling Run Slope (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Sea "B" Mining Company

[Docket No. M–1999–035–C]

Sea ''B'' Mining Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710–1(a) (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Silver Creek Mine (I.D. No. 44–06895) located in Tazewell County, Virginia. The petitioner requests that the Proposed Decision and Order for its previously granted petition, docket number M–98–033–C, modifying the application of 30 CFR 75.1710(1)(a), be amended to include the following equipment: three center-driven Joy 21SC shuttle cars, Serial Nos. ET10956, ET11195, ET14880; Long Airdox Scoop 482, Serial No. 482–2229; and Fletcher Roof Bolting Machine, Model RRII–15 W/T-Bar ATRS, Serial No. 96053. The petitioner asserts that using canopies on this equipment in mining heights less that 46 inches would result in a diminution of safety to the miners.

7. Mountain Coal Company, L.L.C

[Docket No. M–1999–036–C]

Mountain Coal Company, L.L.C, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.325(g)(1) (air quantity) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests a modification of the mandatory standard to allow the minimum ventilating air quantity in the last open crosscut of each set of entries or rooms in a working section or areas where mechanized mining equipment is being installed or removed to be a summation of the air quantity measured in both the last open crosscut and in the ventilation tubing which is periodically located one crosscut outby the last open crosscut. The petitioner proposes to: (i) Have an auxiliary exhaust fan and ventilation tubing in a working section with a large percentage of the section's total air quantity coursed through the fan's tubing thereby routing diesel emissions directly to the return air course; (ii) have the ventilation tubing located one crosscut outby the last open crosscut after connecting the return side crosscut, which then becomes the last open crosscut, and prior to connecting the entire line of the adjacent crosscuts; and (iii) maintain a minimum air quantity of 9,500 CFM through the newly developed last open crosscut to account for minimal diesel usage in the newly developed entry and crosscut. The petitioner states that the total air volume in the newly developed last open crosscut and in the ventilation tubing located one crosscut outby will meet or exceed the sum of the approval plates of all diesel powered equipment operating in the working section; after the entire line of the adjacent crosscuts are developed, the auxiliary fan and associated tubing will be advanced prior to completing the second preparation shift in the section; and that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Mingo Logan Coal Company

[Docket No. M–1999–037–C]

Mingo Logan Coal Company, 1000 Mingo Logan Avenue, Wharncliffe, West Virginia 25651 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Mountaineer Alma A Mine (I.D. No. 46–08730) located in Mingo County, West Virginia. The petitioner proposes to use an automatic fire detection system based on carbon monoxide monitoring of underground conveyor belt entries to allow air coursed through such entries to be used to ventilate

working faces. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all conveyor belt entries used to course intake air to a working place. The petitioner has outlined in this petition specific installation, design, and maintenance procedures for using its carbon monoxide monitoring system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Cyprus Emerald Resources Corporation

[Docket No. M–1999–038–C]

Cyprus Emerald Resources Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.351(c) (Atmospheric Monitoring System (AMS)) to its Emerald Mine No. 1 (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner requests a modification of the mandatory standard as it pertains to the location of the CO sensors for power centers and battery charging stations. The petitioner proposes to install sensors in the most appropriate location to detect products of combustion in an area between 0 and 100 feet of the power center or battery charging station where power centers or battery charging stations are located in crosscuts along intake air courses and where CO monitors or smoke sensors are used. The petitioner states that because of the relatively low airflow in crosscuts in the intake air courses, carbon monoxide or smoke would be monitored with sensors and/or smoke detectors operated in accordance with 30 CFR 75.351, and located closer to the power center or battery charging station than required by the standard. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Canyon Fuel Company, LLC

[Docket No. M–1999–039–C]

Canyon Fuel Company, LLC, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its SUFCO Mine (I.D. No.42–00089) located in Sevier County, Utah. The petitioner proposes to use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of and to perform minor mining activities in the mine. The petitioner has listed in this petition specific terms and conditions for using the generator system. The petitioner states that proper testing procedures training will be conducted for all operators prior to using the generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Canyon Fuel Company, LLC

[Docket No. M–1999–040–C]

Canyon Fuel Company, LLC, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its SUFCO Mine (I.D. No.42–00089) located in Sevier County, Utah. The petitioner proposes to use a 420 KW/525 KVA, 480-volt diesel-powered generator system to move equipment in and out of and to perform minor mining activities in the mine. The petitioner has listed in this petition specific terms and conditions that would be implemented when using the generator system. The petitioner states that proper testing procedures training will be conducted for all operators prior to using the generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Five Star Mining, Inc.

[Docket No. M–1999–041–C]

Five Star Mining, Inc., 6594 West State Road 56, Petersburg, Indiana 47567 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Prosperity Mine (I.D. No. 12–02249) located in Pike County, Indiana. The petitioner proposes to plug oil and gas wells and then mine through or near the plugged wells whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve under 30 CFR 75.1700. The petitioner has described in this petition the techniques that would be used to plug oil and gas wells, and has listed specific procedures that would be used when mining through or near plugged wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard and will not result in a diminution of safety to the miners.

13. R S & W Coal Company, Inc.

[Docket No. M–1999–042–C]

R S & W Coal Company, Inc., R.D. 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1312(e)(1) (explosives and detonators in underground magazines) to its R S & W Drift (I.D. No. 36–01818) anthracite mine located in Schuylkill County, Pennsylvania. The petitioner proposes to store explosives and detonators in gangways at least 10 feet from roadways and any source of electrical current rather than the minimum distance of 25 feet required by the standard. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. R S & W Coal Company, Inc.

[Docket No. M–1999–043–C]

R S & W Coal Company, Inc., R.D. 1, Box 36, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1310(a) (explosives and blasting equipment) to its R S & W Drift (I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner proposes to use non-permissible primacord in each borehole to ensure detonation of the entire column of powder in the underground long hole method of mining anthracite coal used at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Energy West Mining Company

[Docket No. M–1999–044–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah. The petitioner requests that some of the requirements in the Decision and Order (D&O) for it previously granted petition, docket number M–96–01–C, be amended because the requirements have proven to be outdated due to changes in circumstances that originally supported the terms and conditions of the D&O. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the granted D&O and will not result in a diminution of safety provided by the existing standard.

16. B. and B. Coal Company

[Docket No. M–1999–045–C]

B. and B. Coal Company, 225 Main Street, Joliett, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1312(e)(1) (explosives and detonators in underground magazines) to its Rock Ridge No. 1 Slope (I.D. No. 36–07741) anthracite mine located in Schuylkill County, Pennsylvania. The petitioner proposes to store explosives and detonators in gangways at least 10 feet from roadways and any source of electric current rather than the 25 feet required by the standard. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Twentymile Coal Company

[Docket No. M–1999–046–C]

Twentymile Coal Company, One Oxford Centre, 30 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the mandatory standard to permit use of low voltage or battery operated non-permissible electronic testing and diagnostic equipment inby the last open crosscut and in its continuous miner development sections. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Little Buck Coal Company

[Docket No. M–1999–047–C]

Little Buck Coal Company, R.D. #4, Box 395, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its #3 Slope Buck Mtn. (I.D. No. 36–08568) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the mine illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. Little Buck Coal Company

[Docket No. M–1999–048–C]

Little Buck Coal Company, R.D. #4, Box 395, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (temporary notations, revisions, and supplements) to its #3 Slope Buck Mtn. Mine (I.D. No. 36–08568) located in Schuylkill County, Pennsylvania. The petitioner proposes to survey, revise, and supplement mine maps annually instead of every 6 months, as required, to update maps daily by hand notations, and to conduct additional surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. Dally Slate Company and American Bangor Slate & Stone

[Docket No. M–1999–004–C]

Dally Slate Company and American Bangor Slate & Stone, P.O. Box 27, Pen Argyl, Pennsylvania 18072 have filed a petition to modify the application of 30 CFR 57.19007 (overtravel and overspeed devices) to the Dally 2 Pit; Diamond Mine (I.D. No. 36–08597) and the American Bangor Slate & Stone Mine (I.D. No. 36–04864) located in Northampton County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event of a sudden health problem of the operating engineer that impairs his/her ability to operate the hoist. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

21. Williams & Sons Slate & Tile, Inc.

[Docket No. M–1999–005–M]

Williams & Sons Slate & Tile, Inc., 6596 Sullivan Trail, Wind Gap, Pennsylvania 18091–9798 has filed a petition to modify the application of 30 CFR 57.19007 (overtravel and overspeed devices) to its Sreebs Slate 7 Stone Co., Inc. Mine (I.D. No. 36–07156) located in Northampton County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of a stand-by engineer, instead of a mechanical device, to prevent overtravel or overspeed in the event of a sudden health problem of the operating engineer that impairs his/her ability to operate the hoist. The petitioner asserts that application of the standard would result in a diminution of safety.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 19, 1999. Copies of these petitions are available for inspection at that address.

Dated: June 10, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–15424 Filed 6–16–99; 8:45 am]

BILLING CODE 4510–43–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–083)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Code 750.2, Greenbelt, MD 20771; 301–286–7351.

NASA Case No. GSC 13,817–3: Empirical Mode Decomposition Apparatus, Method, and Article of Manufacture for Analyzing Biological Signals and Performing Curve Fitting;
NASA Case No. GSC 13,966–1: GPS ''Compound Eye'' Attitude Sensor;
NASA Case No. GSC 14,098–1: Microaltimeter;
NASA Case No. GSC 14,213–1: Estimated Spectrum Adaptive Postfilter (ESAP) and the Iterative Prepost Filtering (IPF) Algorithms.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15468 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–085)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (650) 604–5104, fax (650) 604–1592.

NASA Case No. ARC–14236–1GE: Method and Apparatus for Evaluating the Visual Quality of Processed Digital Video Sequences, filed March 12, 1999;
NASA Case No. ARC–15007–1LE: Mars VE The Virtual Exploration Mission CD–ROM, filed April 14, 1999.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15470 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–086]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Kennedy Space Center, Mail Code MM–E, John F. Kennedy Space Center, FL 32899; telephone (407) 867–6225, fax (407) 867–2050.

NASA Case No. KSC–12092: Thermal Insulation System & Method.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15471 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–087]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Marshall Space Flight Center, AL 35812; telephone (256) 544–0021, fax (256) 544–0258.

NASA Case No. MFS–31303–1: Generalized Fluid System Simulation Program;
NASA Case No. MFS–31294–3–CIP: Aluminum-Silicon Alloy Having Properties at Elevated Temperatures;
NASA Case No. MFS–31294–4–CIP: Aluminum-Silicon Having Improved Properties at Elevated Temperatures and Articles Cast Therefrom.

Dated: June 11, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15472 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–088)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, Ohio 44135–3191; telephone (216) 433–8855.

NASA Case No. LEW 16,771–1: Hybrid Electric/Chemical Propulsion Systems;
NASA Case No. LEW 16,685–1: Actuator Control Using Shape Memory Alloys, Microsystems and Optically Controlled Switches;
NASA Case No. LEW 16,636–1: Non-Toxic Dual-Mode Satellite Fuel;
NASA Case No. LEW 16,681–1: Selective Emitter Pumped Rare Earth Laser.

Dated: June 4, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15473 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–084]

Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that CryCle Cryogenic Development NV of The Netherlands has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,730,806 entitled ''GAS–LIQUID SUPERSONIC CLEANING AND CLEANING VERIFICATION SPRAY SYSTEM,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to

Program Manager, Dual Use and Licensing, Kennedy Space Center.

DATES: Responses to this notice must be received by August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Chan, Program Manager, Dual Use and Licensing, Kennedy Space Center, Mail Code: MM–E, Kennedy Space Center, FL, 32899; telephone (407) 867–6367.

Dated: June 4, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–15469 Filed 6–16–99; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Pilgrim Nuclear Power Station; Consideration of Approval of Application Regarding Proposed Corporate Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR) Section 50.80 approving the indirect transfer of Facility Operating License No. DPR–35 for the Pilgrim Nuclear Power Station (Pilgrim) held by Boston Edison Company (Boston Edison). The indirect transfer would be to the new holding company formed by Commonwealth Energy System (CES) and BEC Energy (BEC), the parent company of Boston Edison.

Pilgrim is owned and operated by Boston Edison, which is a wholly-owned subsidiary of BEC. According to an application by Boston Edison for approval of the indirect transfer, CES and BEC have entered into an Agreement and Plan of Merger under which those entities will become wholly-owned subsidiaries of a new Massachusetts corporation named NSTAR, thereby resulting in an indirect transfer of Boston Edison's interest in Pilgrim's Facility Operating License to NSTAR. No physical changes to Pilgrim or operational changes are being proposed. No direct transfer of the license will result from the proposed transaction.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer of control will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the indirect license transfer application, are discussed below.

By July 7, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas S. Huran, BEC Energy, 800 Boylston Street, Boston, Massachusetts 02199, General Counsel for BEC Energy; John A. Ritsher, Ropes & Gray, One International Place, Boston, Massachusetts 02110–2624, attorney for BEC Energy; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 19, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 3, 1999, submitted under cover of a letter dated February 5, 1999, and supplement dated May 27, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland this 11th day of June 1999.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15413 Filed 6–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Receipt of Amendment Application to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation; Paducah Gaseous Diffusion Plant; Paducah, Kentucky; Comment Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has received an amendment application from the United States Enrichment Corporation that is considered to be significant pursuant to 10 CFR 76.45. Any interested party may submit written comments on the application for amendment for consideration by the staff. To be certain of consideration, comments must be received by (specify a date that provides for a 30-day comment period). Comments received after the due date will be considered if it is practical to do so. The Commission is able to assure

consideration only for comments received on or before this date.

Written comments on the amendment application should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the submitter. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room and the Local Public Document Room. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments to petition the Commission requesting review of the Director's Decision on the amendment request.

For further details with respect to the action, see the application for amendment. The application 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.

Date of amendment request: January 12, 1999.

Brief description of amendment: The amendment is related to the modifications to upgrade the seismic capability of Buildings C–331 and C–335 at Paducah Gaseous Diffusion Plant. The proposed amendment will change the modification completion date from June 30, 1999, to June 30, 2000.

Certificate of Compliance No. GDP–1: This amendment will revise Compliance Plan Issue 36 to extend the completion date from June 30, 1999, to June 30, 2000.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 10th day of June 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–15412 Filed 6–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

License No. DPR–63, Niagara Mohawk Power Corporation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated May 24, 1999, Mr. Tim Judson (the Petitioner) on behalf of Citizens Awareness Network, Coalition on West Valley Nuclear Waste, Environmental Advocates, Greens of Greater Syracuse, Nuclear Information and Resource Service, Oswego Valley Peace and Justice, Sierra Club (Iroquois Group), Student Environmental Action Coalition, Syracuse Anti-Nuclear Effort, Syracuse Peace Council, and Dr. Steven Penn, has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Nine Mile Point Nuclear Station, Unit No. 1 (NMP1). The Petitioner requests that the NRC take enforcement action against Niagara Mohawk Power Corporation (NMPC) by suspending its NMP1 operating license until (1) NMPC releases the most recent inspection data on the plant's core shroud; (2) a public meeting can be held in Oswego County, New York, to review this inspection data and the repair design to core shroud vertical welds V9 and V10; and (3) an adequate public review of the safety of the plant's continued operation is accomplished. The Petitioner bases this request upon the following issues and concerns:

1. Petitioner believes that the public cannot rely upon NMPC to accurately perform the data analysis necessary to calculate the extent and rate of cracking in the core shroud because of problems with NMPC's previous testing and analyses that were identified in letters to the NRC from Dr. Penn. Petitioner states that the NRC has not responded to Dr. Penn's letters, and, therefore, Petitioner believes Dr. Penn's expressed concerns constitute unreviewed safety issues.

2. NMPC and NRC reported during the May 1999 inspection that cap screws in the bow spring mechanisms of the shroud tie rod assemblies were found to have suffered intergranular stress-corrosion cracking, resulting in the fracture of one of the cap screws. Petitioner states that this problem, and the tie rod problem corrected during the 1997 outage, indicates that NMPC's designs warrant in-depth review by the public and closer implementation scrutiny. Petitioner believes that NMPC's prior selection of poor cap screw material and the NRC staff's acceptance of it raises questions about the credibility of the NRC's approval of the vertical weld repair design and, thus, necessitates a public review of the level of safety before plant restart.

3. Data from the May 1999 inspection of the NMP1 core shroud are new and the NRC staff's review of the data will not be completed before plant restart. Petitioner states that previous NRC staff safety evaluations required future evaluations. Petitioner believes that subsequent NRC approval of an ''unprecedented and unproven'' repair design for vertical welds, issued before the inspection, does not preempt the previously determined need to assess the actual extent of cracking in the vertical welds and the structural integrity of the core shroud.

4. NMPC has informed the NRC that supporting a meeting for public review of the core shroud inspection data during this refueling outage would place an undue regulatory burden on NMPC's manpower resources, and this burden could possibly compromise safety at NMP1. Petitioner considers inadequate licensee resources to be new information and an unreviewed safety issue. Petitioner contends that violations and a civil penalty issued against NMPC on November 5, 1997, involving inadequate management oversight and failure to monitor the effectiveness of maintenance activities are ''directly pertinent to failure of the tie rod installation (1995), faulty design of the bow spring modification (1997), flawed studies on core shroud boat samples (1998), postponement of mid-cycle inspection (1998), and miscalibration of instruments for vertical weld inspection (May 1999).'' Petitioner believes that, because the degree of cracking in the NMP1 shroud is precedent-setting, the question of regulatory burden is not relevant, as the NMP1 shroud requires the strictest regulatory oversight and a full public review. Petitioner states that postponing restart would eliminate this regulatory burden and ensure that outage work is properly reviewed.

The NRC staff has determined that the issues and concerns addressed in the Petition do not warrant deferring restart of NMP1. The NRC staff has also determined that a meeting to provide for public review of the shroud reinspection results need not be held before restart. In reaching this determination, the NRC staff has considered the following:

1. By letter dated May 28, 1999, the NRC staff responded to Dr. Penn's letters dated December 3, 1998; March 25, 1999; and April 15, 1999. In a letter dated April 30, 1999, NMPC has also

responded to relevant concerns in Dr. Penn's letter of March 25, 1999. The responses indicate that testing and evaluations of the core shroud by NMPC and its contractors can be relied upon by the NRC with reasonable assurance as to their accuracy. Therefore, the issues in Dr. Penn's letters do not provide a sufficient basis to warrant suspension of the NMP1 operating license.

2. The bow spring modification to each of the four tie rod assemblies replaces the design function of the failed cap screw and other cap screws that have the potential for future failure. By letter dated May 28, 1999, NMPC confirmed that no additional modifications are needed other than the bow spring modification addressed in the letter of May 21, 1999. The function of the tie rod bow spring does not affect the tie rod's function of maintaining a predetermined compressive force (''preload'') on the shroud during power operation. In response to NMPC's letter dated May 21, 1999, the NRC staff reviewed and approved the modifications as an alternative repair pursuant to 10 CFR 50.55a(a)(3)(i) by letter dated June 7, 1999, and NMPC has implemented these modifications. With the NRC staff's review and approval of this modification, the NRC staff finds no basis to consider enforcement action to suspend the operating license.

3. During the current refueling outage, NMPC has implemented preemptive repairs of shroud vertical welds V9 and V10, as approved by the NRC staff in a letter dated April 30, 1999. These repairs mechanically restore the vertical welds. NMPC has also verbally informed the NRC that the 1997 modifications to the tie rod assemblies have performed satisfactorily and that the tie rod assemblies have applied the appropriate preload on the shroud throughout the last operating cycle. Since vertical welds V9 and V10 have been restored and the tie rods are satisfactorily performing their preload function, the need for NRC staff review of reinspection data before restart is obviated.

4. NMPC will provide reinspection results and analyses to disposition these reinspection findings to the NRC within 30 days of completing the reinspection. This schedule is consistent with the guidelines established by the Boiling Water Reactor Vessel and Internals Project in its report BWRVIP–01, ''BWR Core Shroud Inspection and Flaw Evaluation Guidelines,'' which the NRC staff reviewed and accepted by letter dated September 25, 1994. The NRC staff, noting the results of inspections to date and that NMPC has followed the BWRVIP generic criteria for inspection, evaluation, and repair, does not believe a public meeting is warranted prior to restart. Also, during telephone discussions with the NRC, NMPC has indicated that a meeting on reinspection results before restart would require significant participation and preparation by NMPC, involving some of the same key employees and contractors involved in outage activities. The NRC staff recognizes the value of public meetings, and to this end, a routinely scheduled meeting to discuss recent plant performance at the NMP site is planned for August 1999. This meeting will discuss a variety of topics related to licensee performance. A brief discussion on the NMP1 core shroud activities will be one of the agenda topics.

The remaining issues in the Petition are being treated pursuant to 10 CFR 2.206 of the Commission's regulations and have been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

By letter dated June 11, 1999, the Director acknowledged receipt of the Petition. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, D.C. 20555–0001.

Dated at Rockville, Maryland, this 11th day of June 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15414 Filed 6–16–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 9:30 a.m., July 19, 1999.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 2000 and election of a Vice Chairman.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6840.

Dated: June 15, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–15528 Filed 6–15–99; 12:57 pm]

BILLING CODE 7710–FW–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 15b6–1; Form BDW	SEC File No. 270–17	OMB Control No. 3235–0018.
Rule 15Ba2–5	SEC File No. 270–91	OMB Control No. 3235–0088.
Rule 15c1–5	SEC File No. 270–422	OMB Control No. 3235–0471.
Rule 15c1–6	SEC File No. 270–423	OMB Control No. 3235–0472.
Rule 15c3–1	SEC File No. 270–197	OMB Control No. 3235–0200.
Rule 17Ad–3(b)	SEC File No. 270–424	OMB Control No. 3235–0473.
Rule 17Ad–17	SEC File No. 270–412	OMB Control No. 3235–0469.
Rule 17a–10	SEC File No. 270–154	OMB Control No. 3235–0122.
Rule 17f–2(c)	SEC File No. 270–35	OMB Control No. 3235–029.

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 these existing collections of information to the Office of Management and Budget for extension and approval.

Form BDW is used by broker-dealers to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 broker-dealers annually will incur an

average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding broker-dealers and their registered personnel. The annualized compliance burden per year is 225 hours (900 × 25 = 225 hours). The annualized cost to respondents, utilizing staff at an estimated cost of $35 per hour, would be $7,875 (225 × $35 = $7,875).

Rule 15Ba2–5 permits a duly appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that the fiduciary files with the Commission, within 30 days after entering upon the performance of its duties, a statement setting forth substantially the same information required by Form MSD or Form BD. That statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately one respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated one annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of $80 (i.e, 4 hours × $20).

Rule 15c1–5 states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 390 respondents collect information annually under Rule 15c1–5 and that approximately 3,900 hours would be required annually for these collections. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $390,000 (3,900 hours @ $100).

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 780 respondents collect information annually under Rule 15c1–6 and that approximately 7,800 hours would be required annually for these collections. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $780,000 (8,800 hours @ $100).

Rule 15c3–1 requires brokers and dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. It is estimated that approximately 8,500 active broker-dealer respondents registered with the Commission incur an aggregate burden of 950 hours per year to comply with this rule.

Rule 17Ad–3(b) requires registered transfer agents which for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) to provide an early warning to the issuer of the transfer agent's and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that the seven transfer agents that filed the Notice of Non-Compliance pursuant to Rule 17Ad–2, only two transfer agents will meet the requirements of Rule 17Ad–3(b) . If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Rule 17Ad–17 requires approximately 1,500 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is 7,500 hours annually for all transfer agents. The cost of compliance for each individual transfer agent depends on the number of lost accounts at each transfer agent. Based on information received from transfer agents, we estimate that the annual cost industry wide is $5.2 million.

Rule 17a–10 requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17s–5 to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 350 broker-dealers will spend 12 hours per year comply with Rule 17a–10. The total burden is estimated to be approximately 4,200 hours. Each broker-dealer will spend approximately $1,200.00 per response for a total annual expense for all broker-dealers of $420,000.

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. The plan or information is collected from the exchange or national securities association only once.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and

national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

To date, plans have been approved for seven exchanges and one national securities associations: the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the Chicago Board Options Exchange, and for the National Association of Securities Dealers (collectively the ''SROs''). For the SROs that have already submitted their fingerprint plans to the Commission, there is no requirement for them with approved plans to submit subsequent filings to the Commission and, therefore, there is no continuing annual reporting or recordkeeping burden.

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, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: June 9, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15346 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–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 11Ac1–1	SEC File No. 270–404	OMB Control No. 3235–0461.
Rule 12d2–1	SEC File No. 270–98	OMB Control No. 3235–0081.
Rule 12d2–2	SEC File No. 270–86	OMB Control No. 3235–0080.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to disseminate market markers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c), 17 CFR 240.11Ac1–1(c). This reporting requirement obligates each ''responsible broker or dealer,'' as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b), 17 CFR 240.11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,000 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,356 hours.

Rule 12d2–1 provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2–1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of Section 12(d) of the Act and Rule 12d2–1 thereunder.[2] During the continuance of such suspension under Rule 12d2–1, the Exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under Rule 12d2–1, the exchange must notify the Commission promptly of the effective date of such restoration.

Notices of suspension of trading serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced into trading a previously suspended security. They also provide the Commission with information necessary for it to verify that the suspension has been effected in accordance with the rules of the exchange, and to determine whether the exchange has evaded the requirements of Section 12(d) of the Act and Rule 12d2–2 thereunder by improperly employing a trading suspension. Without Rule 12d2–1, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–1. The burden of complying with the rule is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange and American Stock Exchange than on the other six

[1] A third requirement under the Rule 11Ac1–1, as amended at 17 CFR 11Ac1–1(c)(5), gives electronic communications networks (''ECNs'') the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

[2] Rule 12d2–2 prescribes the circumstances under which a security may be delisted, and sets forth the procedures for taking such action.

exchanges.[3] However, for purposes of estimating the overall burden, the staff has assumed that the number of responses would be evenly distributed among the exchanges. The Commission estimates a total annual burden of 48 hours to comply with Rule 12d2–1. This estimate is based on eight respondents with 12 responses per year for a total of 96 responses requiring on average one-half hour per response.

Based on information acquired in an informal survey of the exchanges and the staff's experience in administering related rules, the Commission staff estimates that the respondents' cost of compliance with Rule 12d2–1 may range from less than $25 to as much as $100 per response. The staff has computed the average related cost per response to be approximately $29, representing one-half reporting hour. The estimated total annual related cost of responding to the requirements of Rule 12d2–1 is approximately $2,748, *i.e.*, eight exchanges filing 12 responses at $29 each.

Rule 12d2–2, Removal from Listing and Registration, 17 CFR 240.12d2–2, and Form 25, 17 CFR 249.25, were adopted in 1935 and 1952, respectively, pursuant to sections 12 and 23 of the Act. Rule 12d2–2 sets forth the conditions and procedures under which a security may be delisted. Rule 12d2–2 also requires, under certain circumstances, that an exchange file with the Commission a Form 25 to remove a security from listing and registration on the exchange and to serve as notification of such delisting. Form 25 provides the Commission with the name of the affected security and issuer, the effective date of the delisting, and the date and type of event predicating the delisting.

Delisting notices and applications for delisting serve a number of purposes. First, the reports and notices required under paragraphs (a) and (b) of Rule 12d2–2 (which do not require Commission action) inform the Commission that a security previously traded on an exchange is no longer traded there. In addition, the applications for delisting required under paragraphs (c) and (d) of the Rule (which require Commission approval) provide the Commission with the information necessary for it to determine that a delisting has been promulgated in accordance with the rules of the exchange, and to determine whether the delisting is subject to any terms or conditions necessary for the protection of investors. Further, notice of a delisting application submitted by an issuer pursuant to subparagraph (d) of Rule 12d2–2 is made available to members of the public who may wish to comment or submit information to the Commission regarding such application. Without Rule 12d2–2 and Form 25, as applicable, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–2 and Form 25. Additionally, any issuer whose security is listed on a national securities exchange which seeks to remove such security from listing and registration on that exchange would be subject to the requirements of subparagraph (d) of Rule 12d2–2. Since the reporting hour burdens incurred in responding to the various requirements of Rule 12d2–2 and Form 25 are not uniform (it generally takes an exchange less time to complete Form 25, when required by subparagraph (a) of Rule 12d2–2, than it does to prepare an application under subparagraph (c) thereof, for example), the Commission staff has, for purposes of its estimation of overall burden, averaged the various reporting burdens and then weighted reporting hours by respondent group, ascribing proportionately smaller burdens (and related costs) to the exchanges, which prepare and file both Forms 25 and applications under Rule 12d2–2 in the routine course of business, while ascribing greater individual burdens (and related costs) to affected issuers, who are subject only to the application requirements of subparagraph (d) of Rule 12d2–2 (and not Form 25), though issuers becoming so subject would likely only be obligated to respond once.[4] Finally, although the burdens of complying with Rule 12d2–2 and Form 25 are not evenly distributed among the exchanges, since there are many more securities listed on the New York Stock Exchange and the American Stock Exchange than on the other national securities exchanges, the staff has assumed, solely for the purpose of making these estimates, that the number of responses would be evenly distributed among the exchanges.

Based on information acquired in an informal survey of the exchanges and issuers obligated to respond, and based further on the staff's experience in administering related rules, the Commission staff estimates that in complying with Rule 12d2–2 and Form 25 all exchanges would incur an aggregate reporting hour burden of 350 hours. The Commission estimates the costs associated with these burden hours to be $20,300 in the aggregate. For issuers obligated to respond to Rule 12d2–2, the staff estimates it receives approximately 50 responses annually from issuers wishing to remove their securities from listing and registration on exchanges. Assuming an average of two reporting hours per response, the Commission estimates an aggregate annual reporting hour burden for those issuers of 100 burden hours, and a related aggregate cost of approximately $8,300.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including thorough the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: June 8, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15347 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

[3] In fact, some exchanges do not file any trading suspension reports in a given year.

[4] An issuer is only obliged to file an application under Rule 12d2–2 when it is voluntarily seeking to withdraw its securities from listing and registration on an exchange. Teh most common situation in which this occurs in when an issuer has listed its securities on multiple exchanges and then, in an effort to reduce costs and/or market fragmentation attributable to such multiple listing, elects to confine listing of securities to the exchange it deems to be the primary marketplace.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23869; 812–11318]

Strategic Global Income Fund, Inc.; Notice of Application

June 10, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section

19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: The Strategic Global Income Fund, Inc. (the ''Fund'') requests an order to permit it to make up to twelve distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for monthly distributions of a fixed percentage of its net asset value (''NAV'').

FILING DATES: The application was filed on September 23, 1998 and amended on February 26, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549–0609. Fund, c/o Dianne E. O'Donnell, Vice President and Secretary, 1285 Avenue of the Americas, 18th floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The Fund is organized as a Maryland corporation and registered under the Act as a closed-end, non-diversified management investment company. The Fund's primary investment objective is to maintain a high level of current income, primarily through investment in income producing securities of issures in at least three different countries. The Fund's shares are listed on the New York Stock Exchange and have historically traded at a discount to NAV. Mitchell Hutchins Asset Management Inc. is the investment adviser to the Fund and is registered under the Investment Advisers Act of 1940.

2. On May 13, 1998, the Fund's board of directors adopted a distribution policy (''Distribution Policy'') that calls for regular monthly distributions at an annualized rate of 8% of the Fund's NAV. Any amount paid under the Distribution Policy which exceeds the sum of the Fund's investment income and net realized capital gains will be treated as a return of capital. The Fund states that the Distribution Policy provides a steady cash flow to the Fund's shareholders and, during periods when its per share NAV is increasing, a means for the shareholders to receive, on a periodic basis, some of the appreciation in the value of their shares. The Fund states that a distribution policy can have a moderating effect on market discounts to NAV and is in the best interests of its shareholders.

3. The Fund requests relief to permit it, so long as it maintains in effect the Distribution Policy, to make up to twelve capital gains distributions in any one taxable year.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. The Fund asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions the Fund may make with respect to any one year, would prohibit the Fund from including available net long-term capital gains in certain of its fixed monthly distributions. As a result, the Fund states that it could be required to fund these monthly distributions with returns of capital (to the extent net investment income and net realized short-term capital gains are insufficient to cover a monthly distribution). The Fund further asserts that, in order to distribute all of its long-term capital gains within the limits in rule 19b–1, the Fund may be required to make total distributions in excess of the annual amount called for by the Distribution Policy or retain and pay taxes on the excess amount. The Fund asserts that the application of rule 19b–1 to the Fund's Distribution Policy may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The Fund submits that the concerns underlying section 19(b) and rule 19b–1 are not present in the Fund's situation. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Fund states that its Distribution Policy has been described in the Fund's periodic communications to its shareholders. The Fund states that, in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution accompanies each distribution. In addition, a statement showing the amount and source of each monthly distribution during the year will be included with the Fund's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who have sold shares during the year).

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend (''selling the dividend''), when the dividend results in an immediate corresponding reduction in NAV and is, in effect, a return of the investor's capital. The Fund submits that this concern does not arise with regard to closed-end management investment companies, such as the Fund, that do not continuously distribute their shares.

5. The Fund states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. The Fund asserts that this concern is not present because the Fund will continue to make fixed distributions regardless of whether the capital gains are included in any particular distribution.

6. Section 6(c) of the Act provides that the SEC may exempt any person or transaction from any provision of the Act or any rule under the Act 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. For the reasons stated above, the Fund believes that the requested relief satisfies this standard.

Applicant's Condition

The Fund agrees that the order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its common shares other than: (i) A non-transferable rights offering to shareholders of the Fund, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition or reorganization; unless the Fund has received from the staff of the SEC written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15360 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41503; File No. SR–Amex–99–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Options on the Credit Suisse First Boston Technology Index

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 1999, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed with the Commission Amendment No. 1 to the proposal on April 15, 1999.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading options on the Credit Suisse First Boston Technology Index (''Index''), a new index developed by Credit Suisse First Boston Corporation (''CSFB'').[4] that measures the stock performance of companies primarily engaged in the computer and communications technology industry. In addition, the Exchange seeks to make two conforming changes to its rules. First, the Exchange proposes to amend Commentary .01 of Exchange Rule 901C, ''Designation of Stock Index Options,'' to indicate that 90% of the Index's numerical value will be accounted for by stocks that meet the current criteria and guidelines set forth in Exchange Rule 915.[5] Second, the Exchange proposes to amend Exchange Rule 902C, ''Rights and Obligations of Holders and Writers of Stock Index Option Contracts,'' to include CSFB in the disclaimer provisions of that rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

I. Purpose

The Exchange proposes to list for trading options on the Index. The Index is designed to reflect and measure the performance of companies engaged in the computer and communications technology industry. Each of the companies included in the Index derives more than 50% of its revenues from the computer and communications technology industry.[6] The Exchange believes that options on the Index will provide investors with an investment vehicle to participate in the appreciation of the component securities, and a means to reduce the risk involved in selecting individual securities in the Index.

The Exchange has represented that except for the Index's calculation methodology, which is modified equal-dollar weighted, the proposal meets all the critria set forth in Commentary .02 of Exchange Rule 901C and the Commission's order approving that rule[7] (collectively, the ''generic listing criteria'').

a. Eligibility Criteria for Index Components

CSFB has established objective criteria to select companies for the Index. Specifically, companies eligible for inclusion in the Index will: (1) Derive more than 50% of their revenues from the computer and communications technology industry; (2) have a minimum market capitalization greater than $500 million; and (3) have a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange updated the list of component securities for the Credit Suisse First Boston Technology Index (''Index'') and provided revised market and trading data for all component securities. In addition, the Exchange clarified the formula used to calculate the value of the Index and identified the sub-sectors that comprise the technology sector. The Exchange also described in greater detail the annual rebalancing process. *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 12, 1999 (''Amendment No. 1'').

[4] In its filing, the Exchange characterized CSFB as a ''leading global investment banking firm that provides comprehensive financial advisory, capital raising, sales and trading, and financial products for users and suppliers of capital around the world.''

[5] Exchange Rule 915, ''Criteria for Underlying Securities,'' contains the criteria that securities underlying options contracts must satisfy. *See infra* note 9 for a description of those criteria.

[6] Exhibit 3B to the Exchange's proposed rule change identifies the 75 companies making up the Index. The component companies are: ADA Telecommunications, Advanced Micro Devices, Altera, Amazon.com, Amdocs, America Online, Analog Devices, Apple Computer, Applied Materials, At Home, BMC Software, Broadcom, Cadence Design, Cisco Systems, Citrix Systems, 3Com, Compaq Computer, Computer Associates, Computer Sciences, Compuware, Dell Computer, Earthlink Network, eBay, Electronic Arts, Electronic Data Systems, EMC, E*TRADE Group, First Data, Gartner Group, Gateway 2000, General Instrument, Hewlett-Packard, i2 Technologies, IBM, Ingram Micro, Inktomi, Intel, Intuit, KLA-Tencor, Lexmark International Group, Linear Technology, Lucent Technologies, Maxim Integrated Products, Microchip Technology, Micron Technology, Microsoft, Motorola, Network Associates, Newbridge Networks, Nokia, Northern Telecom, Novell, Oracle, Parametric Technology, PeopleSoft, QUALCOMM, Rambus, Sanmina, SAP, Sapient, Seagate Technology, Siebel Systems, Solectron, STMicroelectronics, Storage Technology, Sun Microsystems, Tellabs, Teradyne, Texas Instruments, Uniphase, Unisys, Veritas Software, Vitesse Semiconductor, Xilinx, and Yahoo.

[7] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

minimum trading volume of 1,000,000 shares per month for the preceding three mohths. Of these candidate components, the 50 largest eligible companies measured by average market capitalization (determined using the number of shares outstanding on the last day of each December, and the average price per share for the month of December) are automaitcial included in the Index. The remaining 25 Index components are selected by CSFB from the universe of eligible stocks to ensure that the Index provides appropriate representation of the sub-sectors comprising the computer and communications technology sector.[8]

If addition to the selection criteria established by CSFB, the Exchange represents that the Index component securities will substantially comply with the generic listing standards found in Commentary .02 of Exchange Rule 901C. Specifically: (1) Each Index component security will have a minimum market capitalization of at least $75 million and a trading volume in each of the last six months of not less than 1,000,000 shares; (2) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities will meet the current criteria for standardized options trading set forth in Exchange Rule 915;[9] (3) each Index component security will be listed for primary market trading on the Exchange, the New York Stock Exchange, or through the facilities of the Nasdaq Stock Market and will be a reported security; and (4) no component security will represent more than 25% of the weight of the Index, and the five highest weighted component securities in the Index will not in the aggregate account for more than 50% of the weight of the Index.[10]

b. Index Calculation

The Exchange will calculate the Index using a modified equal-dollar weighting methodology, which is designed to ensure that no single component or group of components dominates the Index. At the time of the initial balancing and each subsequent rebalancing, each of the 25 largest component securities (measured by unadjusted market capitalization) will be assigned a weighting of approximately 2.4% of the Index's total weight. Thus, in the aggregate, the 25 largest component securities will account for 60% of the Index's total weight. Each of the remaining 50 Index component securities will be assigned a weighting of approximately 0.8% of the Index's total weight, resulting in an aggregate weighting of 40% of the Index's total weight.

The Exchange believes that the modified equal-dollar weighting methodology allows the Index to more accurately reflect the investment performance of computer and communication technology-based securities. The Exchange further believes that although the weighting methodology provides for a higher weighting for the 25 largest capitalized components, the uniformly low percentage level of weighting for each security keeps those components from dominating the Index.

As of the close of trading on December 31, 1998, a portfolio of Index component stocks was established representing an investment of $2.4 million in each of the 25 highest weighted securities in the Index and $800,000 in each of the remaining 50 securities (rounded to the nearest whole share). The value of the Index equals the current market value (based on the U.S. primary market prices) of the sum of the assigned number of shares of each of the securities in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield a benchmark value of 200.00 at the close of trading on December 31, 1998.

c. Maintenance of the Index

The Exchange will maintain the Index consistent with its original purpose to include companies that derive more than 50% of their revenue from the computer and communications technology industry. Further, the Exchange will maintain the Index in accordance with Exchange Rule 901C, Commentary .02 so that: (1) The Index is comprised of not less than 50 component securities and not more than 100 component securities (*i.e.*, the total number of Index component securities will not increase or decrease by more than one-third from the number of component securities in the Index at the time of its initial listing); (2) component securities constituting the top 90% of the Index, by weight, will each have a minimum market capitalization of $75 million, and the component securities constituting the bottom 10% of the Index, by weight, will each have a minimum market capitalization of $50 million; (3) 90% of the Index's numerical Index value and at least 80% of the total number of components will meet the listing criteria for standardized options that appear in Exchange Rule 915; [11] (4) foreign country securities, or American Depositary Receipts (''ADRs'') thereon, that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component securities will be listed on the Exchange, the NYSE, or Nasdaq (as National Market securities); (6) no component security will represent more than 25% of the weight of the Index, and the five highest weighted components will not in the aggregate account for more than 50% of the weight of the Index; and (7) the trading volume for each component security shall be at least 500,000 shares for each of the last six months or, for each of the lowest weighted components that in the aggregate account for no more than 10% of the weight of the Index, the monthly trading volume may be at least 400,000 shares for each of the last months.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs with that determination, or unless the continued listing of the index option has been approved by the Commission pursuant to Section 19(b)(2) of the Act.[12]

d. Rebalancing

The Exchange and CSFB will review the Index components at the end of each calendar year to ensure that the components continue to meet eligibility requirements and that the Index is representative of the computer and

[8] CSFB has categorized the computer and communications technology sector into the following sub-sectors: computer software, semiconductor, telecommunications equipment, electronic production equipment, electronic data processing peripherals, diversified electronic products, recreational products, electronic components, investment banking, electronic data processing, catalogue, electronic components, and electronic distribution industries.

[9] The Exchange's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 securityholders; (3) trading volume in the U.S. must have been at least 2.4 million shares over the preceding twelve months; (4) the market price per share must have been at least $7.50 for a majority of the business days during the preceding three calendar months; and (5) the issuer must be in compliance with any applicable requirements of the Act. *See* Exchange Rule 915, ''Criteria for Underlying Securities,'' Commentary .01.

[10] In its filing, the Exchange mistakenly stated that the five highest weighted component securities in the Index would not in the aggregate account for more than 60% of the weight of the Index. The Exchange has confirmed that the correct figure is 50%. Telephone conversation between Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange, and Michael Loftus, Attorney, Division, Commission (May 27, 1999).

[11] As part of its rule filing, the Exchange proposes to include this requirement in Commentary .01 of Exchange Rule 901C.

[12] 15 U.S.C. 78s(b)(2).

communications technology industry. Following the close of trading on the second Friday of January of each calendar year, the component shares included in the Index portfolio will be rebalanced by adjusting the number of whole shares for each component such that each component security again approximately represents its assigned weighting in the Index: either 2.4% or 0.8% of the Index's total weight.

At the time of the annual rebalancing, the Index components that continue to satisfy the Exchange's and CSFB's eligibility requirements are ranked in descending order by average market capitalization (determined using the shares outstanding on the last day in December and the average share price for the month of December). The 50 largest Index components that continue to meet all eligibility requirements automatically remain in the Index. The remaining Index components securities are evaluated, and removed if necessary, to ensure that the Index continues to accurately represent the sub-sectors of the technology industry and to allow for the addition of new companies that are participating in emerging areas of technology. The Exchange will add new companies to the Index by selecting replacements from a list of replacement candidates prepared semi-annually by CSFB.[13]

As part of the rebalancing, each of the 25 largest component securities (measured by average market capitalization) is assigned a weight of approximately 2.4% of the Index's total weight. The remaining 50 Index components, are assigned a weight of 0.8% of the Index's total weight.

After the fifth trading day of each January, CSFB will make available to the Exchange a list of all components to be included in the Index for the coming year, as well as their respective weightings—either 2.4% or 0.8%. This list will be based on average component trading data for the preceding month of December. Following the close of trading on the second Friday in January, the next Index portfolio will be created by determining the number of whole shares for each component security so that each component represents its assigned weighting in the Index. After the composition of the Index has been determined, and prior to the third Friday in January, information concerning the selected components of the Index and their weighings will be announced by the Exchange. On the first trading day following the January expiration, all option contracts on the Index will trade based upon the newly rebalanced Index. An adjustment to the Index divisor will be made to ensure the continuity of the Index's value.

The number of shares for each component stock included in the Index portfolio will remain fixed between annual rebalancings except in the event of certain types of corporate actions such as: the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. In the case of a merger or the consolidation of an issuer of a component security, if the security remains in the Index, the number of shares for that component security included in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[14]

e. Component Replacements

The Exchange shall remove and replace an Index component security if: (1) The security no longer trades due to a merger, takeover, or similar extraordinary corporate event; (2) the security fails to satisfy the maintenance and eligibility criteria; or (3) the underlying company no longer represents the computer and communications technology industry.[15] At the time of the annual review in January and after the fifth day of trading in July, CSFB will provide the Exchange with a list of approximately 30 eligible securities from which the Exchange will select replacements. The securities in the replacement list will be selected and ranked by CSFB based on a number of criteria, including conformity with the eligibility standards for Index components. To facilitate the selection of a replacement, the list will be categorized according to the sub-sectors represented in the Index. The Exchange will publicly disseminate the list of replacement securities upon receipt.

The Exchange will select replacement securities from the list based upon market capitalization, liquidity, and sector category. Although CSFB will prepare the list of replacement securities, the Exchange will determine which replacement security will be added to the Index. The Exchange will ensure that replacement securities meet all eligibility criteria at the time they are included in the Index.

If a component security is added or replaced, the Exchange shall: (1) calculate the average dollar value of the remaining Index components that were not among the 25 largest stocks assigned a weighting of 2.4% at the time of the most recent annual rebalancing; and (2) invest that amount in the new component security, to the nearest whole share. In all cases the divisor will be adjusted, if necessary, to ensure continuity in the Index value.

All replacements of component securities and the handling of non-routine corporate actions (*e.g.*, merger or acquisition) will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

f. Dissemination of Index

The Exchange will disseminate the value of the Index in a manner similar to the dissemination of values for other stock indexes that underlie Exchange-traded options. Specifically, during standard trading hours, the Exchange will continuously calculate the value of the Index and disseminate such value every 15 seconds over the Consolidated Tape Association's Network B.

g. Capacity

The Exchange has represented that it has the necessary systems capacity to provide for the trading of options on the Index. Furthermore, the Exchange has confirmed with the Options Price Reporting Authority (''OPRA'') that OPRA has sufficient capacity to provide for the Exchange's listing and trading of options on the Index.[16]

h. Expiration and Settlement

Options on the Index will be European style options[17] that will be cash settled. Standard option trading hours (9:30 A.M. to 4:02 P.M. Eastern Time) will apply to options on the Index. The Index option will expire on

[13] *See infra* Section II(A)(1)(e), ''Components Replacements'' for further information regarding the replacement list.

[14] In the case of routine corporate events such as stock splits, the Exchange will adjust the Index divisor without consulting CSFB. However, adjustments to the Index divisor following extraordinary corporate events such as a merger or bankruptcy will be made by the Exchange only after consulting with CSFB.

[15] The Exchange and CSFB may consult from time to time to evaluate Index component securities and determine whether they continue to represent the computer and communications technology industry in the manner intended.

[16] *See* Letter from Joseph P. Corrigan, Executive Director, OPRA, to Richard Strasser, Assistant Director, Division, Commission, dated March 2, 1999.

[17] Exchange Rule 900C(b)(20) defines a European style option as ''an option contract that can be exercised only at its expiration pursuant to the rules of The Options Clearing Corporation.''

the Saturday following the third Friday of the expiration month (''Expiration Friday''). The last trading day in expiring option series will normally be the second to last business day preceding the Saturday that follows an Expiration Friday (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in two additional calendar months in the January cycle. The Exchange may list and trade flexible Exchange options (''FLEX Options'') as well as longer term option series that have up to thirty-six months to expiration. In lieu of long-term options on the full value of the Index, the Exchange may instead list long-term, reduced value options based on one-tenth (1/10th) the full value of the Index. In no case will the interval between expiration months for a full value or reduced value long-term option contract be less than six months.

The trading of options on the Index, including any long-term options, will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and floor trading procedures. Position limits on reduced value long-term Index options will be equivalent to the position limits for regular (full value) Index options and will be aggregated with such options. For example, if the position limit for the full value Index options is 15,000 contracts on the same side of the market, then the position limit for the reduced value Index options will be 150,000 contracts on the same side of the market.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchanges' regular way opening sale prices for the component securities. In the case of Nasdaq-listed securities, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, the previous trading day's last sale price will be used to calculate the settlement of the Index.

i. Exchange Rules Applicable to Stock Index Options

The Index is deemed to be a ''stock index group'' under Exchange Rule 901C(a), ''Designation of Stock Index Options,'' and a ''stock index industry group'' under Exchange Rule 900C(b)(1), ''Stock Index Options: Applicability and Definitions.'' Consequently, Exchange Rules 900C through 980C will apply to the trading of Index option contracts. These rules cover issues such as surveillance, exercise prices, and position limits.

Surveillance procedures currently used to monitor trading in each of the Exchange's other index option contracts will also be used to monitor trading in options on the Index. With respect to Exchange Rule 903C(b), ''Series of Stock Index Options,'' the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current Index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. The Exchange believes that under Exchange Rule 904C(c), ''Position Limits,'' it is appropriate for the Exchange to establish a position limit for options on the Index at a level no greater than 15,000 contracts.

j. Disclaimer Provisions of Rule 902C

The Exchange proposes to amend Exchange Rule 902C to include CSFB in the disclaimer provisions of that rule. Because CSFB will have no control over dissemination of the value of the Index, the Exchange believes that CSFB should be included in the disclaimer provisions of Exchange Rule 902C, similar to other such entities whose names are attached to indexes underlying options listed on the Exchange.

k. Regulatory Circular for Member Firms

Prior to the commencement of trading of options on the Index, the Exchange will issue a circular to members with relevant information concerning options on the Index. The circular also will remind Exchange members of their regulatory responsibilities; for example, members must comply with Exchange Rule 9.9, ''Suitability of Recommendations.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5)[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foreging, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–10 and should be submitted by July 8, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed the Exchange's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act[20] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in

[20] 15 U.S.C. 78f.

facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the trading of options on the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risks associated with the securities issued by companies in the computer and communications technology industry.

The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 75 securities on which the Index is based. Further, trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with these securities.

Accordingly, the Commission believes that options on the Index will provide investors with an additional trading and hedging mechanism.[21]

Nevertheless, the trading of options on the Index raises several issues related to design of the Index, customer protection, and surveillance. The Commission believes, however, for the reasons discussed below, that the Exchange adequately has addressed these issues.

A. Index Design and Structure

The Commission believes that it is appropriate for the Exchange to apply its rules governing options on stock index industry groups to the trading of options on the Index. The Commission notes that the Index contains 75 securities representing one industry group, and thus reflects a narrow segment of the U.S. equities market.

The Commission notes that the 75 securities comprising the Index are actively-traded. The average daily trading volume among the component securities, calculated over a six month period ending April 9, 1999, ranged from a high of 49.5 million shares per day (Dell Computer) to a low of 220,000 shares per day (Amdocs). In addition, the market capitalizations of the securities in the Index are large, ranging from a high of $475.7 billion (Microsoft) to a low of $888.1 million (Ingram Micro) as of April 9, 1999. Finally, no one component security accounted for more than 3.99% of the Index's total weight, and the percentage weighting of the three largest issues in the Index accounted for 10.68% of the Index's total weight.[22]

With respect to the maintenance of the Index, the Commission believes that the Exchange has implemented several measures to ensure that the Index remains comprised of highly-capitalized, actively-traded securities, thereby ensuring that the Index will remain substantially the same over time. In this regard, the Exchange will maintain the Index so that; (1) the component securities comprising the top 90% of the Index, by weight, each will have market capitalizations of at least $75 million, and the remaining 10% each will have market capitalizations of no less than $50 million; (2) the component securities comprising the top 90% of the Index, by weight, each will have monthly trading volumes of at least 500,000 shares, and the remaining 10% each will have monthly trading volumes no less than 400,000 shares; (3) at least 90% of the components in the Index, by weight, and 80% of the number of components in the Index will be eligible for standardized options trading; (4) the component securities will have primary listings on the Exchange, NYSE, or Nasdaq and will be ''reported'' securities pursuant to Rule 11Aa3–1 of the Act,[23] and (5) absent approval from the Commission pursuant to Section 19(b)(2) of the Act, the Exchange will not increase the number of components to more than 100 or reduce the number of components to fewer than 50.

The Commission further believes that the maintenance standards governing the Index will help protect against material changes in the composition and design of the Index that might adversely affect the Exchange's obligations to protect investors and to maintain fair and orderly markets in options based on the Index. The Exchange is required to immediately notify the Commission staff if the Index fails at any time to satisfy one or more of the specified maintenance criteria. Further, in such an event, the Exchange will not open for trading any additional series of options on the Index, unless the Exchange determines that such failure is insignificant and the Commission concurs in that determination, or unless the Commission approves the continued listing of options on the Index under Section 19(b)(2) of the Act.[24]

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options based on the Index, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-listed options occurs in an environment that is designed to ensure that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the Exchange, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the exchange sponsoring the derivative instrument has the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the primary exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements facilitate and ensure the availability of information needed to fully investigate manipulation if it were to occur.[25] In this regard, the Commission notes that the Exchange and the primary markets for the stocks underlying the Index—the NYSE and the NASDR (the self-regulatory

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[22] At the most recent annual rebalancing (*i.e.*, January 1999), each of the 25 largest component securities was assigned a weighting of approximately 2.4% of the total Index weight. This weighting is not static, however, and varies in response to changes in the market price of each component security. Therefore, increases in the market prices of some component securities have caused their weightings to increase above the original 2.4% setting (*e.g.*, America Online had a weighting of 3.99% as of April 9, 1999).

[23] 17 CFR 240.11Aa3–1.

[24] 15 U.S.C. 78s(b)(2).

[24] *See* Securities Exchange Act Release No. 31243 (Sept. 28, 1992), Fr 45849 (Oct. 5, 1992), 57 FR 45849 (Oct. 5, 1992).

organization which oversees Nasdaq)—are members of the Intermarket Surveillance Group, which provides for the sharing of all necessary surveillance information among members. The Commission believes that this arrangement will ensure the availability of information necessary to detect potential manipulations and other trading abuses. In addition, the Exchange has represented that foreign country securities, or ADRs thereon, that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index.

The Commission notes that certain concerns are raised when a broker-dealer, such as CSFB, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that the Exchange has adequately addressed this concern with respect to options on the Index.

First, the value of the Index, including the final settlement value, will be calculated and disseminated by the Exchange independently of CSFB. Accordingly, neither CSFB nor any of its affiliates or other persons will be in receipt of the values prior to their public dissemination. Second, CSFB has established informational barriers around the CSFB personnel who have access to information regarding changes and adjustments to the Index.[26] The Commission believes that these barriers will help prevent the improper use of material non-public information concerning the Index and strengthen the proposal by maintaining the integrity of changes made to the Index. In addition, CSFB currently has in place internal review procedures to monitor trading activity in Index component securities and securities included in the replacement list. Finally, the Exchange's existing surveillance procedures for stock index options will apply to the options on the Index and should provide the Exchange with adequate information to detect and deter trading abuses. In sum, the Commission believes that the procedures discussed above will help to ensure that CSFB does not unfairly use any information regarding the Index that it obtained through its role in developing and maintaining the Index.

The Commission also believes that it is appropriate for the Exchange to make conforming changes to Exchange Rules 901C and 902C. The revisions are technical in nature and are designed to ensure that the Exchange's rules remain current. The Commission believes that it is important for the Exchange to update its rules to reflect newly listed derivative products. Pursuant to Section 19(b)(2) of the Act,[27] the Commission finds good cause for approving the proposal, including Amendment No. 1 thereto, prior to the thirtieth day after the date of publication of notice of the filing thereof in the **Federal Register.** The Commission notes that proposed rule changes regarding the listing and trading of options on industry group or narrow-based stock indexes may become effective immediately upon filing provided they satisfy certain generic listing standards.[28] The generic listing standards establish minimum guidelines concerning the design and operation of narrow-based indexes.

The Commission recognizes that the Index, as amended, satisfies all of the generic listing standards save two, the weighting methodology [29] and the frequency of rebalancing.[30] The Commission believes that because these deviations from the generic listing standards are not significant, they should not preclude the Exchange from receiving accelerated approval for its proposal.

Specifically, the modified equal-dollar weighted methodology will ensure that the weighting of the Index does not become concentrated in one or several component securities. Because the weightings assigned to the component securities are low (*i.e.*, 2.4% and 0.8%), it is unlikely that the weighting of a single component or group of component securities would increase to such a level that concentration issues would arise. Furthermore, the Exchange has represented that in no instance will a single component security represent more than 25% of the weight of the Index, nor will the five highest weighted component securities in the aggregate account for more than 50% of the weight of the Index.

For similar reasons, the Commission believes that it is appropriate for the Exchange to rebalance the Index annually rather than quarterly. Quarterly rebalancings were designed as a prophylactic measure against concentration problems. The Commission believes, however, that the low weightings assigned to component securities of the Index at the annual rebalancings addresses the concentration concerns that underlie the need for more frequent rebalancings. Accordingly, because the Index substantially complies with the generic listing standards, and the investor protection concerns have been addressed, the Commission finds good cause exists for granting accelerated approval to the proposed rule change Amendment No. 1 thereto.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change, SR-Amex-99–10, and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15349 Filed 6–16–99; 8:45 am]

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[26] Details of the CSFB informational barriers have been submitted to the Commission under separate cover. *See* Letter from Robert L. Mazzeo; Solomon, Zauderer, Ellenhorn, Frischer & Sharp; to Richard Strasser, Assistant Director, Division, Commission, dated June 9, 1999.

[27] 15 U.S.C. 78s(b)(2).

[28] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) and Commentary .02 of Exchange Rule 901C. While a proposed rule change filed in accordance with the generic listing standards becomes effective immediately upon filing, trading in the approved options may not commerce until 30 days from the date of filing.

[29] Although the generic listing standards contemplate the calculation of indexes using capitalization weighted, price weighted, or equal-dollar weighted methods, the standards do not specifically encompass the modified equal-dollar weighted methodology that the Exchange proposes to use for the Index.

[30] Under the generic listing standards, indexes based upon the equal-dollar weighting methodology must be rebalanced at least quarterly.

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41501; File No. SR–CBOE–99–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Governing the Operation of the Retail Automatic Execution System

June 9, 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 April 16, 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. On

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

May 21, 1999, the CBOE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing the operation of its Retail Automatic Execution System (''RAES'') to increase the maximum order sizes on certain options and clarify the authority of the appropriate Floor Procedure Committees (''FPCs'') of the Exchange to change current procedures governing assignment and price improvement of RAES orders, as described below. The text of the proposed rule change is available at the Office of the Secretary, CBOE, 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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 principal purpose of the proposed rule change is to increase from 20 to 50 contracts the maximum size or orders for equity options and certain classes of index options that are eligible to be executed through RAES. In addition, the proposed rule change clarifies the authority of the appropriate FPCs to change RAES order assignment procedures, and reflects the decision of the appropriate FPCs to implement a new assignment procedure called ''Variable RAES.'' The proposed rule change also eliminates the current ''one-tick'' limit applicable to the RAES automatic ''step-up'' procedure, which provides for the automatic improvement of the price at which an order is executed on RAES in order to match a better price in another market. The proposal would allow the appropriate FPCs to authorize automatic RAES step-ups for price differentials greater than the one ''tick'' differential currently specified in the rules. Finally, the proposed rule change makes a number of editorial revisions to clarify or update the language of current rules governing RAES operations.

Currently, the maximum size of RAES-eligible orders is 20 contracts for all classes of options traded on CBOE for which a greater maximum is not expressly provided in the rules. Options subject to the 20 contract maximum include all classes of equity options, all classes of sector index options and all other classes of index options except options on the S&P 500 Index, the Nasdaq 100 Index, the Dow Jones Industrial Average, and interest rate options.[4] Increasing the RAES eligibility maximum to 50 contracts for these classes of options will not automatically permit orders up to this size to be entered into RAES. Instead, the actual maximum RAES eligibility size will be established by the appropriate FPC of the Exchange, which may maintain the maximum for particular classes at levels below the 50-contract maximum allowable under the proposed rule change.

Under existing Interpretation and Policy .01 under Rule 6.8, the appropriate FPC may increase the size of RAES-eligible orders for multiply-traded equity options to match the size of orders in options of the same class that are eligible for entry into the automated execution system of any other options exchange, subject to filing notice of the increase under Section 19(b)(3)(A) of the Act.[5] The Exchange nonetheless believes the FPC should be able to permit up to 50 contracts to be eligible for RAES in response to the perceived needs of the market, as reflected in member requests, without regard to automatic execution limits on other exchanges. The proposal will also provide greater flexibility to the Exchange in its competition for order flow with other exchanges that already have 50-contract maximum eligibility levels for their own automatic execution systems, since the Exchange will no longer be limited to acting in response to increases in automatic execution eligibility levels initiated by the other exchanges. CBOE represents that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

In addition, the proposed rule change clarifies the authority of the appropriate FPCs to change RAES order assignment procedures, and reflects the decision of the appropriate FPCs to implement a new assignment procedure called ''Variable RAES.'' Under current procedures, RAES orders are randomly assigned to market makers, and each market maker is required to buy or sell the entire order assigned to him or her. By contrast, under Variable RAES, each market maker will be able to designate in advance, at the time of logging on to RAES, a maximum number of contracts he or she is willing to buy or sell each time a RAES order is randomly assigned to that market maker.[6] No market maker, however, will be able to designate a maximum that is less than a stated minimum number of contracts per assignment established by the appropriate FPC. In determining appropriate minimum execution levels,the FPC must take into account whether market makers have sufficient capital to fill an order of that size.

If the number of contracts in a RAES order is less than or equal to the market maker's specified limit, the market maker will be obligated to buy or sell all of the contracts in the order, and the next RAES order will be assigned to the next market maker on the RAES assignment rotation. If the number of contracts in an order exceeds the specified limit, the market maker will be obligated to buy or sell the number of contracts equal to the specified limit. The remainder of the order will be assigned to the next market maker on the RAES assignment rotation, who will likewise be obligated to buy or sell the number of remaining unassigned contracts in the order up to that market maker's specified limit. The assignment rotation will continue in this manner until all of the contracts in the order have been assigned to one or more market makers, even if this requires

[3] In Amendment No. 1, the CBOE clarified issues relating to the implementation of new order assignment procedures for orders entered into the CBOE's Retail Automatic Execution System. *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated May 20, 1999 (''Amendment No. 1'').

[4] The RAES eligibility maximum is currently 99 contracts for options on the S&P 500 Index and the Nasdaq 100 Index, and 100 contracts for options on the DJIA and interest rate options. To simplify the administration of RAES and eliminate confusion, the proposed rule change would make the RAES eligibility maximums 100 contracts for these four classes of options. *See* Rule 6.8(e). One hundred contracts is also the proposed RAES eligibility maximum for options on the Dow Jones High Yield Select 10 Index, described in File No. SR–CBOE–99–06, which is pending with the Commission. Securities Exchange Act Release No. 41357 (April 30, 1999), 64 FR 25091 (May 10, 1999).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] Variable RAES is proposed partly in anticipation of the likelihood that as the maximum size of RAES-eligible orders is increased, individual market makers may seek to limit the size of the RAES orders they are obligated to fill.

more than one assignment to the same market maker as the assignment rotation continues.

Variable RAES will apply to all classes of options eligible for entry into RAES. CBOE represents that the Variable RAES procedure will be implemented following the effectiveness of this proposed rule change, and will be described in a circular to be distributed to the membership prior to that time. To allow for a period of adjustment, CBOE states that the Variable RAES procedure may be implemented across option classes in phases. Finally, if the appropriate FPC decides to implement a different RAES order assignment procedure, it must file a proposed rule change with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

In addition, the proposed rule change authorizes the appropriate FPC to establish a ''step up amount'' for purposes of the automatic step-up procedure of Interpretation and Policy .02 under Rule 6.8 that is greater than the current amount, which equals the minimum quote interval (''tick'') for that class of option under Rule 6.42. The automatic step-up procedure currently states that in designated classes of multiply-traded options, if the Exchange's best bid or offer is inferior to the bid or offer in another market by no more than one tick, an order in RAES will be automatically executed at the better bid or offer. The proposed rule change will enable the appropriate FPC to establish price differentials greater than one tick at which orders will be automatically executed in RAES in order to match better bids or offers in other markets.

By enhancing the Exchange's ability to provide instantaneous, automatic execution of public customers' orders at the best available prices, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[7] of the Act in general, and furthers the objectives of Section 6(b)(5)[8] of the Act in particular, in that it will promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market, and 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 proceedings to determine whether the proposed rule change should be disapproved.

VI. 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 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–99–17 and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15352 Filed 6–16–99; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41480; File No. SR–CHX–99–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc., To Add a New Price Improvement Algorithm, SuperMax Plus

June 4, 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 May 10, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new price improvement algorithm, SuperMax Plus, to Rule 37 of Article XX of the Exchange's rules. The text of the proposed rule change is available at the Office of the Secretary, CHX 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[3] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

SuperMax and Enhanced SuperMax are two existing CHX programs within the MAX System that use computerized algorithms to provide automated price improvement. Both of these programs have been approved by the Commission on a permanent basis.[4] The CHX now proposes to add a new program, SuperMax Plus, as a third program within the MAX System. The Exchange believes that it is important to remain competitive in an ever increasing technologically advanced marketplace. In order to do so, the Exchange is proposing SuperMax Plus, a new, more aggressive price improvement algorithm that increases the likelihood that small investors will receive price improvement for their orders.[5]

Background

The existing SuperMax program is a voluntary program in which a specialist may choose to participate. Participation is on a security-by-security basis and is currently limited to Dual Trading System issues (*i.e.*, issues traded on both the CHX and either the New York Stock Exchange or American Stock Exchange). A specialist can only activate and de-activate the program with respect to a given security once a month.

Under the current SuperMax algorithm, small agency market orders (*i.e.*, orders from 100 shares to 499 shares (or a greater amount chosen by the specialist)) are eligible for price improvement if the market for the security is quoted with a spread of ⅛ of a point or greater. Specifically, the current algorithm provides 1/16th of a point price improvement from the ITS BBO[6] (the ITS best offer for a buy order, and the ITS best bid for a sell order) if an execution at the ITS BBO would be at least ⅛th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale.

The Enhanced SuperMax program is an add-on feature for securities for which the Exchange's SuperMax program has already been activated. Thus, the Enhanced SuperMax program is only available when SuperMax is already enabled for that security.

Under the Enhanced SuperMax algorithm, small agency market orders (*i.e.*, orders for 500 to 2099 shares (or a greater amount chosen by the specialist))[7] are eligible for price improvement if the market for the security is quoted with a spread of 3/16th of a point. Specifically, the algorithm ''stops'' an eligible order at the ITS BBO if the execution at the ITS BBO would be at least ⅛th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale. Enhanced SuperMax flags an order stopped under this program with a ''U.'' Once stopped, the order receives 1/16th of a point price improvement over the stopped price if the next primary market sale occurs before the end of the time-out period and the sale is at least ⅛th of a point lower than (for a buy order) or higher than (for a sell order) the stopped price.

Proposal

As stated above, the Exchange proposes to create a new price improvement algorithm, to be called SuperMax Plus. SuperMax Plus will become part of the existing voluntary price improvement programs in which specialists may choose to participate. Participation will continue to be on a security-by-security basis and will be limited to Dual Trading System issues. A specialist will only be able to activate and de-activate the program with respect to a given security once a month. The existing SuperMax and Enhanced SuperMax algorithms will then both become add-on features for securities for which the Exchange's new SuperMax Plus program has already been activated. Thus, the existing SuperMax and Enhanced SuperMax programs will only be available when SuperMax Plus is activated for a particular security.

Under the new proposed SuperMax Plus algorithm, small agency market orders (*i.e.*, orders from 100 shares to 199 shares—or a greater amount chosen by the specialist and approved by the Exchange) would be eligible for price improvement if the market for the security is quoted with a spread of ⅛th of a point or greater. The new algorithm would provide 1/16th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale.[8]

The Exchange further proposes revising the existing SuperMax algorithm so that it applies to orders between 200 and 499 shares.[9] The existing Enhanced SuperMax algorithm will not change.

As proposed, specialists that choose to engage one or more price improvement algorithms will have to engage the SuperMax Plus for at least up to 199 shares. In addition, once a specialist engages SuperMax Plus for 199 shares, the specialist must either engage SuperMax for orders between 199 shares and 500[10] shares or increase the maximum size order that is eligible for SuperMax Plus to 499 shares. This proposed requirement will ensure that once a specialist decides to offer automated price improvement, one or more price improvement algorithms will be available for orders of up to at least 499 shares.

Finally, the proposed rule change deletes a reference contained in the Enhanced SuperMax rules to orders for 200 shares or less entered by the Odd-Lot Execution Service because Enhanced SuperMax is not eligible for orders that are less than 500 shares.

Timing of Effectiveness of System Changes

The Exchange expects that the addition of SuperMax Plus and the

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[3] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR–CHX–95–08).

[4] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998) (File No. SR–CHX–98–09) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998) (File No. SR–CHX–98–09) (approving revised SuperMax and Enhanced SuperMax algorithms).

[5] While the Exchange is also proposing conforming changes to the existing MAX rules to accommodate the new program, no substantive changes are being made to SuperMax and Enhanced SuperMax, the existing price improvement algorithms, at this time.

[6] As used in the CHX rules, ITS BBO means the best bid or offer among the American, Boston, Cincinnati, Chicago, New York, Pacific, and Philadelphia exchanges or the Intermarket Trading System/Computer Assisted Execution System quote. *See* CHX Art. XX, Rule 37(a)(2).

[7] Notwithstanding the 500 share minimum order size contained in the rule, the smallest size order eligible for Enhanced SuperMax must always be at least one share greater than the largest size order in such security that is eligible for SuperMax. In other words, if a specialist voluntarily increases the maximum order size for SuperMax, the minimum order size for Enhanced SuperMax must be increased accordingly.

[8] This provides better price improvement than under the current SuperMax algorithm where 1/16th of a point price improvement is provided if an ITS BBO execution would be at least ⅛th of a point away from the last sale.

[9] Notwithstanding the 200 share minimum order size contained in the new proposed rule for SuperMax, the smallest size order eligible for SuperMax must always be at least one share greater than the earliest size order in such security that is eligible for SuperMax Plus. In other words, if a specialist voluntarily increases the maximum order size for SuperMax Plus, the minimum order size for SuperMax must be increased accordingly.

[10] The original filing reflected 499 shares but was changed to 500 as per conversation between Paul O'Kelly, Executive Vice President, Legal/Market Regulation, CHX and Heather Traeger, Attorney, Division of Market Regulation, SEC, on June 4, 1999.

corresponding changes to the other price improvement algorithms will become operative immediately upon approval of this proposed rule change by the Commission; the Exchange expects to implement this change June 15, 1999.[11]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[12] of the Act in that is it 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, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change accomplishes these ends by increasing the number of trades that will receive automated price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no 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. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and coping at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–04 and be submitted by July 8, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The CHX requests accelerated approval of the proposed rule change. The Commission has reveiwed the CHX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act[13] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires that the rules of an Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating trisections in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[15] The Commission believes the new price in improvement contemplated by the new SuperMax Plus will provide investors with enhanced investment opportunities because price improvement from the ITS BBO will be available if an execution at the ITS BBO would be at least 1/16th of a point higher than (for a buy order) or lower than (for a sell order) the last primary market sale, instead of the 1/8th requirement under SuperMax and Enhanced SuperMax. The Commission notes that while SuperMax Plus is a voluntary program that specialists choose to participate in for Dual Trading System issues, providing a greater number of investors an opportunity to achieve price improvement is compatible with the views expressed in the Order Handling release.[16]

Because provision of price improvement should enhance small investors participation in the securities market, without sacrificing investor protection and the public interest, the Commission therefore finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CHX–99–04) is hereby on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15350 Filed 6–16–99; 8:45 am]

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[11] Conversation between David Rusoff, Foley & Lardner and Mandy Cohen, Senior Counsel, Division of Market Regulation, SEC on May 28, 1999.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c)(f).

[16] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (File No S7–30–95).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4182; File No. SR–CHX–99–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., Concerning an Increase in the BEST Rule Guarantee and the Minimum Order Acceptance Level in the MAX System

June 4, 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 May 7, 1999, the Chicago Stock Exchange, Inc. (''CHX'') or ''the 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 filing was amended on May 26, 1999.[3] The proposed rule change, as amended, has been filed by CHX as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[4] under the Act.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kirsten M. Carlson, Foley & Lardner, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 25, 1999 (''Amendment No. 1'').

[4] 17 CFR 240.19b–4(f)(6).

[5] CHX originally filed this proposal under Rule 19b–4(e)(5). Amendment No. 1 amended this to Rule 19b–4(f)(6). As requested by CHX, the Commission will consider the original filing, dated May 6, 1999, as the pre-filing notice required by Rule 19b–4(f)(6). The Amendment No. 1 filing date (May 26, 1999) will be considered the formal filing date of the rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 37 of Article XX of the Exchange's Rules to increase the size of the guarantee contained in the Best Rule and the minimum order acceptance level in the MAX System for all agency orders in Dual Trading System issues from 2099 to 5099 shares.[6] The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

Under the Exchange's Guaranteed Execution System (the ''BEST System''), specialists must currently accept and guarantee execution of agency orders in Dual Trading System issues from 100 up to and including 2099 shares. Similarly, the Exchange's Midwest Automatic Execution System (the ''MAX system'') contains an auto-acceptance threshold parameter that is designated by the specialist on a stock-by-stock basis that must be set for 2099 shares or greater for Dual Trading System issues.

The proposed rule change would increase the Best Rule guarantee and the auto-acceptance threshold. Specifically, the rule change would require specialists to accept all agency orders in Dual Trading System issues from 100 up to and including 5099 shares, and require that the auto-acceptance threshold parameter be set for 5099 shares or greater for all Dual Trading System issues.

The Exchange believes that the larger size guarantees will benefit customers by providing customers with better executions. Further, the Exchange believes the larger size guarantees will enhance the competitiveness of the Exchange by attracting additional order flow.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition.

CHX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Data of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) CHX provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission approve acceleration of the operative date of the proposal to June 11, 1999. The Exchange states that the increase of the BEST Rule Guarantee and auto acceptance threshold will benefit customers by providing better executions, and that accelerating the operative date will allow customers to receive this benefit earlier. The Exchange further states that it is technologically prepared to begin operations as soon as permitted by the Commission. The Commission finds that accelerating the operative date of the rule change as proposed is consistent with the protection of investors and the public interest, and thus designates June 11, 1999, as the operative date of the filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–3, and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15354 Filed 6–16–99; 8:45 am]

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[6] The increase to 5099 shares will become operative on a date specified in a Notice to Members to be issued in the immediate future.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41508; File No. SR–DTC–99–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Charges

June 10, 1999.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on March 15, 1999, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the fee schedule for DTC's services.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, DTC is adjusting the fees that it charges for various services so that the fees are aligned with their respective estimated service costs for 1999. The adjusted fees are effective with respect to services provided on and after April 1, 1999. DTC's Board of Directors has completed a review of DTC's estimated unit service costs for 1999, and DTC's service fees have been adjusted to reflect the results of the review.

The revised 1999 fee schedule has been set to yield $7.5 million more in operating revenue on an annual basis than the present fee schedule (which had been based on 1998 unit service costs) would have yielded. Studies of the impact of the new fees on all participants based on their monthly bills from DTC for October, November, and December 1998 shows an average monthly fee increase of 1.4%.

The revised fee schedule includes transaction based fees for DTC's custody service, which has previously been billed as a flat monthly fee that is negotiated with respect to each participant based on its projected overall usage of the service.[4] Since DTC has completed its analysis of the various activities included in the custody service and the respective costs associated with each activity, the flat monthly fee will be replaced with individual transaction fees applied to all participants uniformly and based on the nature of the transaction.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because fees will be allocated more equitably among DTC participants based on respective estimated 1999 unit service costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

Participants and other users of DTC's services were informed that DTC anticipated that annual service fees would likely increase in 1999 by $7.5 million by an Important Notice dated July 31, 1998, (B#4612) entitled ''Preliminary Projections for 1998 and Anticipated 1999 Services Fees.'' An Executive Important Notice dated February 5, 1999, (B#6063) entitled ''1999 Revisions of DTC Service Fees'' was then circulated to participants and other users of DTC services on February 5, 1999, advising them of the new fees effective with respect to services provided on and after April 1, 1999, and inviting their questions or comment. Because participants have supported cost based fees in the past and because overall the subject fee changes are modest, a more formal period for participant comment was not considered necessary.

No written comments from participants or others have been received with respect to this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(g)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–07 and should be submitted by July 8, 1999.

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[1] 15 U.S.C. 78s(b)(1).

[2] The revised fee schedule is attached as Exhibit 2 to DTC's filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Securities Exchange Act Release No. 39761 (March 16, 1998) 63 FR 13893 [File No. SR–DTC–97–09].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

For the Commission by the Division of Market Regulaton, pursuant to delegated authority.[8]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–15353 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—41510; File No. SR–NASD–99–21]

Self-Regulatory Organizations Notice of Filing of Proposed Rule Change by the Nation Association of Securities Dealers, Inc. Relating to the Creation of a Dispute Resolution Subsidiary

June 10, 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 April 26, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to create a dispute resolution subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), to handle dipsute resolution programs; to adopt by-laws for such subsidiary; and to make conforming amendments to the Delegation Plan, the NASD Regulation By-Laws, and the Rules of the Association. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

A. The NASD, Inc. (referenced as ''NASD''), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as ''NASD Regulation''),[22] [and] The Nasdaq Stock Market, Inc. (referenced individually as ''Nasdaq''), *and NASD Dispute Resolution, Inc. (referenced individually as ''NASD Dispute Resolution'')* (referenced collectively as the ''Subsidiaries''). The term ''Association'' shall refer to the NASD and the Subsidiaries collectively.

* * * * *

B. Functions and Authority of the NASD—The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A., [and] III.A, *and V.A.,* the NASD has delegated certain authority and functions to its subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures establish by that Board. Any function or responsibility as a registered securities association under the Securities Exchange Act of 1934 (''Act''), or as set forth in the Certificate of Incorporation or the by-laws is hereby reserved, except as expressly delegated to the subsidiaries. In addition, the NASD expressly retains the following authority and functions:

* * * * *

4. To review the rulemaking and disciplinary decisions of the subsidiaries (See Sections II.B., [and] III.B., *and V.B. below).*

5. No change.

6. To resolve any disputes [between] *among* the Subsidiaries.

* * * * *

11. To take action ''*ab inito*'' in an area of responsibility delegated to NASD Regulation in Section II, [or] to Nasdaq in Section III, *or to NASD Dispute Resolution in Section V.*

* * * * *

D. Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A., [and] III.A, *and V.A.* below, the staff, books, records, and premises of the NASD subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of the Subsidiaries are officers, directors, employees and agents of the NASD for purposes of the Act. The books and records of NASDAQ shall be subject at all times to inspection and copying by NASD Regulation.

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority:

1. Subject to Section 1.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. To establish and interpret rules and regulations and provide exemptions for NASD members including, but not limited to fees[,] *and* membership requirements[, and arbitration procedures].

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) [arbitration of disputes among and between NASD members, associated persons and customers, (ii)] public and private sale or distribution of securities including underwriting arrangements and compensation, [(iii)] *(ii)* financial responsibility, [(iv)] *(iii)* qualifications for NASD membership and association with NASD members, [(v)]*(iv)* clearance and settlement of securities transactions and other financial responsibility and operational matters affecting members in general and securities listed on The Nasdaq Stock Market and on other markets operated by the Nasdaq Stock Market, [(vi)] *(v)* NASD member advertising practices, [(vii)] *(vi)* administration, interpretation and enforcement of Association rules, [(viii)] *(vii)* administration and enforcement of Municipal Securities Rulemaking Board (''MSRB'') rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, and [(ix)] *(viii)* standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

* * * * *

h. [To conduct arbitrations, mediations and other dispute resolution programs.

i.] To conduct qualification examinations and continuing education programs.

j.–t. Remembered as i.–s.

* * * * *

B. NASD Regulation Board Procedures

1. Rule Filings—The NASD Board shall review and ratify a rule change adopted by the NASD Regulation Board before the rule change becomes the final action of the Association if the rule

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change: (a) imposes fees or other charges on persons or entities other than NASD members; (b) raises significant policy issues in the view of the NASD Regulation Board, and the NASD Regulation Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the National Adjudicatory Council. If the NASD Regulation Board does not refer a rule change to the NASD Board for review, the NASD Regulation Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the NASD Regulation Board's action. During the process of developing rule proposals, NASD Regulation staff shall consult with and seek the advice of Nasdaq *and NASD Dispute Resolution* staff before presenting any rule proposal to the NASD Regulation Board.

C. Supplemental Delegation Regarding Committees

* * * * *

[2. National Arbitration and Mediation Committee

a. The National Arbitration and Mediation Committee shall have the powers and authority pursuant to the Rules of the Association to advise the NASD Regulation Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Association members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of the Rules of the Association.

b. The NASD Regulation Board shall appoint the National Arbitration and Mediation Committee by resolution. The National Arbitration and Mediation Committee shall consist of no fewer than ten and no more than 25 members. The members of the National Arbitration and Mediation Committee shall be equally balanced between Industry and Non-Industry committee members.

c. At all meetings of the National Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the National Arbitration and Mediation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry Committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.]

[3]*2.* Operations Committee

* * * * *

V. NASD Dispute Resolution, Inc.

A. Delegation of Functions and Authority

1. Subject to Section I.B.11, the NASD hereby delegates to NASD Dispute Resolution and NASD Dispute Resolution assumes the following responsibilities and functions as a registered securities association:

a. To establish and interpret rules and regulations and provide exemptions for NASD members pertaining to dispute resolution programs including, but not limited to, dispute resolution fees and procedures.

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the arbitration, mediation, or other resolution of disputes among and between NASD members, associated persons and customers.

c. To conduct arbitrations, mediations, and other dispute resolution programs.

d. To establish the annual budget and business plan for NASD Dispute Resolution.

e. To determine allocation of NASD Dispute Resolution resources.

f. To establish and assess fees and other charges on NASD members, persons associated with NASD members, and others using the services or facilities of NASD Dispute Resolution.

g. To manage external relations on matters related to dispute resolution with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

2. All action taken pursuant to authority delegated pursuant to A.1. shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

B. NASD Dispute Resolution Board Procedures

Rule Filings—The NASD Board shall review and ratify a rule change adopted by the NASD Dispute Resolution Board before the rule change becomes the final action of the Association if the rule change: (a) imposes fees or other charges on persons or entities other than NASD members; or (b) raises significant policy issues in the view of the NASD Dispute Resolution Board, and the NASD Dispute Resolution Board refers the rule change to the NASD Board. If the NASD Dispute Resolution Board does not refer a rule change to the NASD Board for review, the NASD Dispute Resolution Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the NASD Dispute Resolution Board's action. During the process of developing rule proposals, NASD Dispute Resolution staff shall consult with and seek the advice of Nasdaq and NASD Resolution staff before presenting any rule proposal to the NASD Dispute Resolution Board.

C. Supplemental Delegation Regarding Committees

1. National Arbitration and Mediation Committee

a. The National Arbitration and Mediation Committee shall have the powers and authority pursuant to the Rules of the Association to advise NASD Dispute Resolution Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Association members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of the Rules of the Association.

b. The NASD Dispute Resolution Board shall appoint the National Arbitration and Mediation Committee by resolution. The National Arbitration and Mediation Committee shall consist of no fewer than ten and no more than 25 members. The National Arbitration and Mediation Committee shall have at least 50 percent Non-Industry members.

c. At all meetings of the National Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the National Arbitration and Mediation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

* * * * *

By-Laws of NASD Regulation, Inc.

Article I—Definitions

* * * * *

(q) ''Industry Director'' or ''Industry Member'' means a Director (excluding the President) or a National Adjudicatory Council or committee member who

* * * * *

(6) has a consulting or employment relationship with or provide professional services to the NASD, NASD Regulation, Nasdaq, *NASD Dispute Resolution,* or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(t) ''NASD Dispute Resolution'' means NASD Dispute Resolution, Inc,;

(t)–(ff) Renumbered as (u) to (gg)

* * * * *

Rules of the Association

* * * * *

0120. Definitions

When used in these Rules, unless the context otherwise requires:

* * * * *

(b) ''Association''

The term ''Association'' means, collectively, the NASD, NASD Regulation, [and] Nasdaq, *and NASD Dispute Resolution.*

* * * * *

Code of Arbitration Procedure

10102. National Arbitration and Mediation Committee

(a) The *NASD Dispute Resolution* Board of [Governors of the Association] *Directors,* following the annual election of *its* members [to] *by* the *NASD* Board *of Governors* shall appoint a National Arbitration and Mediation Committee of such size and composition including representation from the public at large, as it shall deem appropriate and in the public interest. The Chairman of the Committee shall be named by the Chairman of the *NASD Dispute Resolution* Board. The said Committee shall establish and maintain [a pool] *rosters* of [arbitrations] *neutrals* composed of persons from within and without the securities industry.

(b) The Committee shall have the authority to [establish] *recommend to the NASD Dispute Resolution Board* appropriate Rules, regulations, and procedures to govern the conduct of all arbitration, *mediation, and other dispute resolution* matters before the Association. All Rules, regulations, and procedures and amendments thereto [promulgated] *presented* by the Committee must be by a majority vote of all the members of the said Committee. It also shall have such other power and authority as is necessary to effectuate the purposes of this code.

* * * * *

10400. Mediation Rules

10401. Scope and Authority

* * * * *

(b) A Director of Mediation shall be designated by the [Association] *NASD Dispute Resolution Board* to administer mediations under these Procedures. The Director will consult the [Association's] National Arbitration and Mediation Committee on the administration of mediations and the Committee shall, as necessary, make recommendations to the Director *of Arbitration* and recommend to the *NASD Dispute Resolution* Board [of Governors] amendments to the Procedures. The duties and functions of the Director may be delegated by the Director, as appropriate. For purposes of this Rule 10400 Series, the term ''Director'' refers to the Director of Mediation.

* * * * *

10404. Mediator Selection

* * * * *

(c) No mediator shall be permitted to serve as an arbitrator of any matter pending in [NASD] *Association* arbitration in which he served as a mediator, nor shall the mediator be permitted to represent any party or participant to the mediation in any subsequent [NASD] *Association* arbitration proceeding relating to the subject matter of the mediation.

* * * * *

By-Laws of NASD Dispute Resolution, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) ''Act'' means the Securities Exchange Act of 1934, as amended;

(b) ''Amex'' means American Stock Exchange LLC;

(c) ''Board'' means the Board of Directors of NASD Dispute Resolution;

(d) ''broker'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(e) ''Commission'' means the Securities and Exchange Commission;

(f) ''day'' means calendar day;

(g) ''dealer'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

(h) ''Delaware law'' means the General Corporation Law of the State of Delaware;

(i) ''Delegation Plan'' means the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' as approved by the Commission, and as amended from time to time;

(j) ''Director'' means a member of the Board, excluding the Chief Executive Officer of the NASD;

(k) ''Executive Representative'' means the executive representative of an NASD member appointed pursuant to Article IV, Section 3 of the NASD By-Laws;

(l) ''Industry Director'' or ''Industry member'' means a Director (excluding the President) or a committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenue received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or

partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, Nasdaq, NASD Dispute Resolution, or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

(m) ''NASD'' means the National Association of Securities Dealer, Inc.;

(n) ''NASD Board'' means the NASD Board of Governors;

(o) ''NASD Dispute Resolution'' means NASD Dispute Resolution, Inc.;

(p) ''NASD member'' means any broker or dealer admitted to membership in the NASD;

(q) ''NASD Regulation'' means NASD Regulation, Inc.;

(r) ''Nasdaq'' means The Nasdaq Stock Market, Inc.;

(s) ''Nasdaq-Amex'' means Nasdaq-Amex Market Group, Inc.;

(t) ''National Nominating Committee'' means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(u) ''Non-Industry Director'' or ''Non-Industry member'' means a Director (excluding the President) or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

(v) ''person associated with a member'' or ''associated person of a member'' means: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

(w) ''Public Director'' or ''Public member'' means a Director or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, Nasdaq, or NASD Dispute Resolution;

(x) ''Rules of the Association'' or ''Rules'' means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article II

Offices

Location

Sec. 2.1 The address of the registered office of NASD Dispute Resolution in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. NASD Dispute Resolution also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of NASD Dispute Resolution may require.

Change of Location

Sec. 2.2 In the manner permitted by law, the Board or the registered agent may change the address of NASD Dispute Resolution's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

Article III

Meetings of the Stockholder

Action by Consent of Stockholder

Sec. 3.1 Any action required or permitted by law to be taken at any meeting of the stockholder of NASD Dispute Resolution may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holder of the outstanding stock.

Article IV

Board of Directors

General Powers

Sec. 4.1 The property, business, and affairs of NASD Dispute Resolution shall be managed by or under the direction of the Board. The Board may exercise all such powers of NASD Dispute Resolution and have the authority to perform all such lawful acts as are permitted by law, the Certificate of Incorporation, these By-Laws, or the Delegation Plan to assist the NASD in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to NASD Dispute Resolution staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than eight Directors, the exact number to be determined by resolution adopted by the stockholder of NASD Dispute Resolution from time to time. Any new Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

Qualifications

Sec. 4.3 (a) Directors need not be stockholders of NASD Dispute Resolution. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors plus the President. The Board shall include the President, at least two Non-Industry Directors who are also Governors of the NASD Board, and at least one Industry Director who is also a Governor of the NASD Board. The Board shall include at least one Public Director, unless the Board consists of eight Directors. In such case, at least two Directors shall be Public Directors. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the board.

(b) As soon as practicable, following the annual election of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual election or until their successors are chosen and qualified. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Election

Sec. 4.4 Except as otherwise provided by law, these By-Laws, or the Delegation Plan, after the first meeting of NASD Dispute Resolution at which Directors are elected, Directors of NASD Dispute Resolution shall be elected each year at the annual of the stockholder, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefor, the Directors shall cause such election to be held as soon thereafter as convenient.

Resignation

Sec. 4.5 Any Director may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation,

unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 4.6 Any or all of the Directors may be removed from office at any time, with or without cause, only by a majority vote of the NASD Board.

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry or Non-Industry Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 4.9 (a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum is present.

(b) Except as provided in Section 4.14(b), the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

Regulation

Sec. 4.10 The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of NASD Dispute Resolution not inconsistent with the law, the Certificate of Incorporation, these By-Laws, the Delegation Plan, the Rules of the Association, or the By-Laws of the NASD, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of account or reports made to NASD Dispute Resolution by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of NASD Dispute Resolution, or in relying in good faith upon other records of NASD Dispute Resolution.

Meetings

Sec. 4.11 (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the stockholder, no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section 4.12.

(b) Regular meetings of the Board may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board. After such determination has been made, notice shall be given in accordance with Section 4.12.

(c) Special meetings of the Board may be called by the Chair of the Board, by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.12.

(d) A Director or member of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. 4.12 (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to NASD Dispute Resolution by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Article IX, Section 9.3(b).

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat.

Committees

Sec. 4.13 (a) The Board may, by resolution or resolutions adopted by a majority of the whole Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

(b) The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to NASD Dispute Resolution by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the

Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of NASD Dispute Resolution to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of NASD Dispute Resolution to be affixed to all papers that may require it.

(c) Except as otherwise permitted by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Certificate of Incorporation or the By-Laws of NASD Dispute Resolution; adopting an agreement of merger or consolidation; recommending to the stockholder the sale, lease, or exchange of all or substantially all NASD Dispute Resolution's property and assets; or recommending to the stockholder a dissolution of NASD Dispute Resolution or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

(e) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of NASD Dispute Resolution between meetings of the Board, and which may authorize the seal of NASD Dispute Resolution to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Dispute Resolution shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the President. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(g) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of NASD Dispute Resolution, including recommendations for NASD Dispute Resolution's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD Dispute Resolution. The Finance Committee shall consist of two or three Directors. The President of NASD Dispute Resolution shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.

(h) If the Board appoints a non-Director to a committee, upon request of the Secretary of NASD Dispute Resolution, each such prospective committee member shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry or Non-Industry committee member. The Secretary of NASD Dispute Resolution shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of NASD Dispute Resolution, and shall report immediately to the Secretary any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14 (a) A Director or a committee member shall not directly or indirectly participate in any determinations regarding the interests of any party if that Director or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between NASD Dispute Resolution and one or more of its Directors or officers, or between NASD Dispute Resolution and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Dispute Resolution and the NASD, NASD Regulation, Nasdaq, Nasdaq-Amex, or Amex.

Action Without Meeting

Sec. 4.15 Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or the committee.

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 NASD Dispute Resolution, the Board, any committee, and NASD Dispute Resolution staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to the NASD By-Laws or the NASD Regulation By-Laws. A Director or committee member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to

communicate in any official capacity on behalf of NASD Dispute Resolution, the Board, or any committee. NASD Dispute Resolution, the Board, any committee, and the NASD Dispute Resolution staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to the NASD By-Laws or the NASD Regulation By-Laws.

Article V

Officers, Agents, and Employees

Officers

Sec. 5.1 The Board shall elect the officers of NASD Dispute Resolution, which shall include a President, a Secretary, and such other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to: Executive Vice President, Senior Vice President, Vice President, General Counsel, and Treasurer of NASD Dispute Resolution. All such officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board. The terms of office of such officers shall be at the pleasure of the Board, which by affirmative vote of a majority of the Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of said offices, except the offices and duties of President and Vice President or of President and Secretary. None of the officers except the President, need be Directors of NASD Dispute Resolution.

Absence of the President

Sec. 5.2 In the case of the absence or inability to act of the President of NASD Dispute Resolution, or in the case of a vacancy in such office, the Board may appoint its Chair or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

Sec. 5.3 In addition to the officers, NASD Dispute Resolution may employ such agents and employees as the Board may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the President, or any officer designated by the Board may from time to time determine. Agents and employees of NASD Dispute Resolution shall be under the supervision and control of the officers of the NASD Dispute Resolution, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Delegation of Duties of Officers

Sec. 5.4 The Board may delegate the duties and powers of any officer of NASD Dispute Resolution to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

Sec. 5.5 (a) Any officer may resign at any time upon written notice of resignation to the Board, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of NASD Dispute Resolution may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with NASD Dispute Resolution.

Bond

Sec. 5.6 NASD Dispute Resolution may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Article VI

Compensation

Compensation of Board, Council, and Committee Members

Sec. 6.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, and the members of any committee of the Board. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of NASD Dispute Resolution.

Article VII

Indemnification

Indemnification of Directors, Officers, Employees, Agents, and Committee Members

Sec. 7.1 (a) NASD Dispute Resolution shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of NASD Dispute Resolution or a committee member, or is or was a Director, officer, or employee of NASD Dispute Resolution who is or was serving at the request of NASD Dispute Resolution as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of NASD Dispute Resolution) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of NASD Dispute Resolution to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) NASD Dispute Resolution shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) NASD Dispute Resolution may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of NASD Dispute Resolution or is or was an agent of NASD Dispute Resolution who is or was serving at the request of NASD Dispute Resolution as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) NASD Dispute Resolution may, in its discretion, pay the expenses

(including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by NASD Dispute Resolution to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expense (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of NASD Dispute Resolution; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to NASD Dispute Resolution.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, or committee member, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), NASD Dispute Resolution shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) NASD Dispute Resolution's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by NASD Dispute Resolution, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, NASD Dispute Resolution shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. 7.2 NASD Dispute Resolution shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, employee, or agent of NASD Dispute Resolution, or is or was serving at the request of NASD Dispute Resolution as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liablity asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not NASD Dispute Resolution would have the power to indemnify such person against such liability hereunder.

Article VIII

Capital Stock

Sole Stockholder

Sec. 8.1 The NASD shall be the sole stockholder of the capital stock of NASD Dispute Resolution.

Certificates

Sec. 8.2 The stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in NASD Dispute Resolution owned by the stockholder.

Signatures

Sec. 8.3 (a) Certificates for shares of capital stock of NASD Dispute Resolution shall be signed in the name of NASD Dispute Resolution by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of NASD Dispute Resolution or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than NASD Dispute Resolution or its employee, or by a registrar other than NASD Dispute Resolution or its employee, any other signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by NASD Dispute Resolution with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. 8.4 (a) A record of all certificates for capital stock issued by NASD Dispute Resolution shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates that have been canceled, the date of cancellation thereof.

(b) NASD Dispute Resolution shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Except as otherwise required by applicable law, NASD Dispute Resolution shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not NASD Dispute Resolution shall have express or other notice thereof.

Transfers of Stock

Sec. 8.5 (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Certificate of Incorporation, or

these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of NASD Dispute Resolution. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of NASD Dispute Resolution only upon delivery to NASD Dispute Resolution or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. 8.6 Each certificate for capital stock surrendered to NASD Dispute Resolution for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 8.7 until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. 8.7 In the event that any certificate for shares of capital stock of NASD Dispute Resolution shall be mutilated, NASD Dispute Resolution shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed NASD Dispute Resolution may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or such owner's representatives, to furnish to NASD Dispute Resolution a bond with an acceptable surety or sureties and in such sum as shall be sufficient to indemnify NASD Dispute Resolution against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

Fixing of Record Date

Sec. 8.8 The Board may fix a record date in accordance with Delaware law.

Article IX

Miscellaneous Provisions

Corporate Seal

Sec. 9.1 The seal of NASD Dispute Resolution shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of NASD Dispute Resolution, the year of its incorporation, and the words ''Corporate Seal'' and ''Delaware.'' The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

Fiscal Year

Sec. 9.2 The fiscal year of NASD Dispute Resolution shall begin on the first day of January in each year, or such other month as the Board may determine by resolution.

Waiver of Notice

Sec. 9.3 (a) Whenever notice is required to be given by law, the Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholder, Directors, of members of a committee of directors need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec 9.4 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of NASD Dispute Resolution by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of NASD Dispute Resolution, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of NASD Dispute Resolution by any principal officer or subordinate officer of NASD Dispute Resolution, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of NASD Dispute Resolution. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. 9.5 Any records maintained by NASD Dispute Resolution in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article X

Amendments; Emergency by-Laws

By Stockholder

Sec 10.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the stockholder, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec 10.2 To the extent permitted by the Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board.

Emergency By-Laws

Sec 10.3 The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholder that shall, notwithstanding any different provision of law, the Certificate of

Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which NASD Dispute Resolution conducts its business or customarily holds meetings of the Board or stockholder, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to create a new subsidiary to handle dispute resolution programs and to make certain related changes.

a. Background

The Association's arbitration and mediation programs were operated by the NASD Arbitration Department until 1996, when those functions were moved to NASD Regulation following a corporate reorganization. This reorganization in part grew out of recommendations of a Select Committee formed by the NASD and made up of individuals with significant experience in the securities industry and NASD governance (''the Rudman Committee''). This review took place from December 1994 through August 1995, and the Rudman Report was issued in September 1995.

Meanwhile, in September 1994, the NASD established the Arbitration Policy Task Force, headed by David S. Ruder, former Chairman of the SEC (''the Ruder Task Force''), to study NASD arbitration and recommend improvements. The Ruder Task Force, composed of eight persons with various backgrounds in the area of securities arbitration, met from the fall of 1994 to January 1996, when its Report was issued.

Both the Rudman Committee and the Ruder Task Force made recommendations that affected the arbitration program. The Rudman Committee recommended that the NASD reorganize as a parent corporation with two relatively autonomous and strong operating subsidiaries, independent of one another. The resulting enterprise would consist of NASD Inc., as parent, The Nasdaq Stock Market, Inc. (''Nasdaq'') as one subsidiary to operate the Nasdaq market, and a new subsidiary, NASD Regulation, Inc. to regulate the broker/dealer profession.[3] The Ruder Task Force Report, *Securities Arbitration Reform*, issued in January 1996, recommended that the dispute resolution program be housed either in the parent or in NASD Regulation (Report at 151–52). The Arbitration Department was placed in NASD Regulation in early 1996 based on the recommendation of the Rudman Committee,[4] and the name of the department was changed to the Office of Dispute Resolution (ODR) shortly thereafter, to reflect the broader range of dispute resolution mechanisms.

The NASD believes that ODR has established credibility as a neutral forum that is fair to all parties and has gained acceptance by investor groups. Because there are significant differences between the disciplinary role of NASD Regulation and the sponsorship of a neutral forum for the resolution of disputes between members, associated persons, and customers, however, the NASD believes that creation of a separate dispute resolution entity will further strengthen the independence and credibility of the arbitration and mediation functions. A new dispute resolution subsidiary will benefit from the perception that it is separate and distinct from other NASD entities. The new subsidiary will be subject to the same SEC oversight as other parts of the NASD enterprise, which includes regular inspections by the SEC and the need to file all by-laws and rule changes with the SEC.[5] In addition, the new subsidiary will remain subject to inspections by the General Accounting Office (GAO), which performs audits at the request of Congress.

The NASD proposes to call the new subsidiary NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), and proposes to incorporate and organize it in much the same way as NASD Regulation. Like ODR, the subsidiary would be part of the NASD Regulatory and Dispute Resolution Group.

Staffing for NASD Dispute Resolution will be the same as at present, except for the creation of a President position and the possible creation of certain other executive positions. Certain functions, such as human resources, legal, finance, communications, administrative services, and technology will be shared with the NASD and other subsidiaries to avoid duplication; the new subsidiary will be transfer-priced (charged) for the cost of those functions as it presently is.

Funding for the new subsidiary will be handled in much the same way as at present. Currently, ODR is not self supporting. Fees received from parties who use the arbitration and mediation programs are not sufficient to fund the Office's regular activities. Rather, as a part of NASD Regulation, ODR shares in the revenue stream of the overall NASD enterprise, which includes revenue derived from member assessments, various fees and charges, disciplinary fines, and other sources of income. In return, ODR is charged for services that it receives from the other corporations in the enterprise as described above.

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[3] *Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors* (''Rudman Report'') at R–8. As described in the Rudman Report, ''The new NASDR subsidiary would thus be responsible for the NASD's regulation of the broker-dealer profession, and not for regulating or operating any OTC market, including Nasdaq. NASDR would promulgate and administer Rules of Fair Practice, membership rules, and operational requirements for NASD member firms; oversee the examination and investigation of member firms and registered representatives; administer the district offices; bring enforcement actions for rule violations (including violations of OTC trading rules, whether referred by Nasdaq, another authority or uncovered by the NASDR itself), and administer the adjudicative machinery for all NASD disciplinary actions. NASDR would also assume NASD's other membership regulatory functions, such as advertising reviews, corporate finance reviews, arbitration, and administration of the CRD.'' Rudman Report at R–8.

[4] Rudman Report at R–8. That Report noted, ''Unlike Nasdaq, NASDR would not be responsible for operating any securities market or associated market systems. Rather, NASDR would be the NASD's strong, independent regulatory arm, responsible for oversight of the broker-dealer profession, and the programs (such as licensing, advertising and corporate finance review, and arbitration) that the NASD performs for the industry as a whole. The NASDR Board should thus be constituted to perform effective, independent regulatory oversight, with 50% public representation.'' Rudman Report at R–12.

[5] In a release approving an NASD rule change, the SEC noted: ''The Commission oversees the arbitration programs of the SROs, like the NASD, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes.'' Exchange Act Release No. 40109, n. 53 (June 22, 1998), 63 FR 35299 (June 29, 1998).

Apart from accounting changes to reflect the new subsidiary's status, the current funding process for ODR will be the same for the new subsidiary. ODR employees will continue in the same positions in the new subsidiary, and the physical offices will not move.

The NASD proposes a five-person Board for NASD Dispute Resolution, consisting of three non-industry and two industry directors, as those terms and defined in Article I of the proposed By-Laws. The Chief Executive Officer of the NASD will be an ex-officio non-voting member of the Board. The non-industry directors would include at least two persons who also are members of the NASD Board, and an additional person knowledgeable in the dispute resolution field. At least one of the non-industry directors also will qualify as a public director, as defined in the By-Laws. One industry director would be a member of the NASD Board; the other would be the President of the new subsidiary. The NASD Board would elect the directors, as is done for the members of the other subsidiary boards.

The procedures currently in place for disciplining members and associated persons for noncompliance with arbitration awards will continue much as they are at present. The Code of Arbitration Procedure, in IM–10100, provides that the failure of a member or associated person to comply with an arbitration award obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the NASD, other self-regulatory organizations, or the American Arbitration Association [6] may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110. This language presently applies to awards obtained in the NASD Regulation forum, since that forum applies rules and procedures that are ultimately approved by the NASD. This will also be the case for NASD Dispute Resolution. Enforcement of the Code will continue to be handled by NASD Regulation.

As is the case with actions by NASD Regulation, actions by the NASD Dispute Resolution Board may be referred by that Board to the NASD Board, or reviewed by the NASD Board, as provided in the proposed amendments to the Delegation Plan.[7] Thus, the rules utilized by NASD Dispute Resolution will be the rules of the Association, just as rules approved currently by the other subsidiaries and subject to NASD Board review are deemed to be NASD rules.

NASD Regulation has formed a working group with representatives from various departments to ensure a smooth transition.

The necessary amendments to create the new subsidiary, and certain technical changes, are described in detail below.

Description of Proposed Amendments

The Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan'') is proposed to be amended to add references to the new subsidiary and to move the arbitration and mediation functions from NASD Regulation to NASD Dispute Resolution. Therefore, references to the delegations of authority to the subsidiaries and the rulemaking decisions of the subsidiaries have been amended to include references to NASD Dispute Resolution. As is the case for NASD Regulation and Nasdaq, actions of the new subsidiary Board will be subject to review by the NASD Board, and rule filings will be made by the new subsidiary on behalf of the NASD.

The description of the National Arbitration and Mediation Committee (''NAMC'') in the Delegation Plan has been moved from the section concerning NASD Regulation to a new section concerning NASD Dispute Resolution. A change has been made in the NAMC member balancing requirement to provide more flexibility while maintaining at least 50% non-industry membership. The Delegation Plan currently provides that NAMC membership shall be equally between industry and non-industry members. It may be desirable, however, to have an odd number of members of the NAMC to avoid tie votes. Therefore, the provision has been amended to state that the NAMC shall have at least 50% non-industry members. This provides additional flexibility while maintaining a minimum of half non-industry members, in accordance with the spirit of the Delegation Plan.

The NASD Regulation By-Laws are proposed to be amended to add references to NASD Dispute Resolution in the definitions sections.[8]

Rule 0120(b) is proposed to be amended to clarify that the term ''Association'' collectively means the NASD and its subsidiaries that are considered part of the self-regulatory organization; that is, the NASD, NASD Regulation, Nasdaq, and NASD Dispute Resolution.

Rule 101029a) of the Code of Arbitration Procedure is proposed to be amended to clarify that the new NASD Dispute Resolution Board will appoint members of the NAMC and name its chair. In addition, Rule 10102(a) is proposed to be amended to replace the phrase ''a pool of arbitrators'' with the more accurate phrase ''rosters of neutrals,'' since the current rosters include both arbitrators and mediators (collectively referred to as ''neutrals'').

Rule 10102(b) is proposed to be amended to conform to current practice, in which the NAMC recommends to the Board certain rules and procedures to govern the conduct of arbitration and mediation matters, and does not unilaterally make such changes. In addition, the phrase ''NASD Dispute Resolution'' has been added before ''Board'' to clarify that recommendations will be made to that Board. As noted above, actions of the new subsidiary Board will be subject to review by the NASD Board.

Rule 10401 is proposed to be amended to replace the phrase ''by the Association'' with regard to designation of the Director of Mediation and replace it with ''by the NASD Dispute Resolution Board,'' and to delete ''Association's'' as a modifier of ''National Arbitration and Mediation Committee.'' Although the NASD and its subsidiaries are collectively referred to as the Association for self-regulatory purposes, the use of ''Association'' in this Rule may cause confusion in light of the new corporate structure and serves no useful purpose in the Rule. The term ''of Arbitration'' is proposed to be added after one instance of the word ''Director'' to distinguish it from the Director of Mediation. In addition, the reference to the ''Board of Governors'' has been changed to ''NASD Dispute Resolution Board'' to reflect the new structure.

Rule 10404 is proposed to be amended to change the term ''NASD'' to ''Association'' to be more inclusive in this instance because, as described above, the term ''Association'' refers to the entire self-regulatory organization.

[6] The NASD Regulation Board of Directors recently approved an amendment to this Interpretive Material that would add, ''or other dispute resolution forum selected by the parties.'' *See* Exchange Act Release No. 41339 (April 28, 1999), 64 FR 23887 (May 4, 1999). This proposal was filed as a non-controversial filing. The NASD designated May 17, 1999 as the effective date of the proposal.

[7] The Delegation Plan was amended in 1997, together with related By-Laws changes designed to allow the NASD Board to take action on its own initiative rather than waiting for a subsidiary to act on the matter. *See* Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

[8] The NASD also intends to review the NASD and Nasdaq By-Laws and consider appropriate amendments to recognize of NASD Dispute Resolution.

The proposed NASD Dispute Resolution By-Laws are modeled on those of NASD Regulation, with modifications, described below, appropriate to the particular functions of NASD Dispute Resolution. For example, NASD Dispute Resolution will not require that a committee other than the NAMC review all rulemaking proposals. Similarly, there is no need for provisions on nominations and elections, as all NASD Dispute Resolution Board members will be selected by the NASD Board of Governors. Standard provisions allowing for the appointment of an Executive Committee and a Finance Committee have been included for flexibility, although it is not immediately expected that such committees will be needed.

Proposed Article IV, Section 4.2 sets the number of Board members at five to eight although, as stated above, the intention initially is to have only five Board members. In addition, the Chief Executive Officer of the NASD will be an ex-officio non-voting member of the Board. Proposed Section 4.3(a) provides that the number of non-industry directors shall equal or exceed the number of industry directors plus the President. This means that the President is treated as an industry director for this purpose. The other industry director and at least two of the non-industry directors also will be sitting members of the NASD Board. This overlapping membership provides stability and uniformity among the corporations. At least one of the non-industry directors also will qualify as a public director. The proposed By-Laws define ''Public Director'' as a director who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, Nasdaq, or NASD Dispute Resolution. The By-Laws define ''Non-Industry Director'' as a director (excluding the President) who is (1) a public director or public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an industry director or industry member.

A minor modification was made to the standard terminology in Section 4.13(h) to clarify that the Board may appoint a non-director to a committee, since this power is implied but not specifically stated in the preceding paragraphs of Section 4.13.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will protect the public interest by providing a sharper focus on the dispute resolution process and maintaining Commission oversight of that process.

Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–21 and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15348 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41504; File No. SR–NSCC–98–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Ceasing To Act for a Member

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 8, 1998, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. 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 proposed rule change will amend NSCC's rules to eliminate the distinction between those instances where NSCC ceases to act on behalf of a member as a result of the member's insolvency or for another reason and to permit NSCC to complete certain open receipt versus payment and delivery versus payment transactions (''RVP/DVP transactions'').

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed change is to eliminate the distinction between those instances where NSCC declines or ceases to act for a member because the member is insolvent and where NSCC declines or ceases to act for a member for another reason. The proposed rule change also would permit NSCC to complete certain open RVP/DVP transactions of an insolvent broker-dealer that is a member or clears through a member.

Declining or Ceasing To Act

According to NSCC, there is no substantive reason for continuing the distinction in Rule 18 between those instances where NSCC ceases to act because a member has become insolvent and those instances where NSCC ceases to act for another reason. NSCC's procedures for ceasing to act for an insolvent member are set forth in Section 3 of Rule 18 and its procedures for ceasing to act when the member is not insolvent are set forth in Section 2 of Rule 18. Therefore, the proposed rule change merges these two Sections.

Currently, Sections 2(a) and (b) (non-insolvency scenario) and Sections 3(a) and (b) (insolvency scenario), set forth the transactions which may be eliminated by NSCC from its processing when it ceases to act for a member. Generally, these sections provide that if NSCC gives notice that it is ceasing to act for a member before NSCC issues the security balance orders in a pending balance order accounting operation or the consolidated trade summary in a pending continuous net settlement accounting operation for that member's pending trades, NSCC may, in its discretion, exclude that member's trades from the balance order or continuous net settlement accounting operation, as appropriate. This means that any trade not guaranteed by NSCC before NSCC ceases to act could be eliminated from NSCC's clearance and settlement systems. As a result the parties to the trade would have to settle the trade on their own outside of NSCC.

Proposed Sections 2(a) (i) and (ii) would replace Sections 2 (a) and (b) and Sections 3 (a) and (b) and would specifically tie the exclusion of a trade to NSCC's guaranty. Proposed Section 2(a)(iii) would address the elimination of security orders issued with respect to ''special trades'' and transactions in foreign securities. Currently, the elimination of these trades is only addressed in the insolvency portion of NSCC's rules, Section 3(c)(iii).

Section 2(c) currently sets forth how NSCC would handle envelope transactions when it ceases to act for a solvent member. However, Section 3 of NSCC's rules does not address how Envelope transactions are handled when NSCC ceases to act for an insolvent member. To remedy this situation, proposed Section 4 would mirror current Section 2(c) and would address the completion of envelope transactions of a member for whom NSCC has declined or ceased to act, regardless of the solvency status of the member.

Sections 2(d)(i) and (ii) and Section 3(b)(ii) pertain to the completion of CNS trades. According to NSCC, when it ceases to act for a member, it completes CNS trades through a qualified securities depository regardless of whether the member was solvent or insolvent. However, only Section 2 specifically addresses the completion of these trades through a qualified securities depository. Accordingly, proposed Section 5 clarifies that CNS transactions would be completed through a qualified securities depository regardless of the solvency status of the relevant member, unless, in an insolvency scenario, the rules of the relevant insolvency regime did not allow NSCC to take certain actions with respect to the completion of CNS trades.

Sections 2(d)(iii) and 3(c)(ii) currently address the closing out of any remaining CNS transactions. Under the proposed rule change, these sections would be merged into proposed Section 6(a).

Sections 2(b) and 3(c)(ii) pertain to the completion of balance order transactions after NSCC ceases to act for a member. According to NSCC, when it ceases to act for a solvent or insolvent member, the procedures for completing a balance order transaction are the same. However, only Section 3 details how NSCC would close out balance order transaction and the procedure for members to submit related close-out losses to NSCC. To remedy this deficiency, the proposed rule change proposes new Section 6(b), which is similar to current Sections 3(c) and (d). Proposed Section 6(b) would cover the close-out of balance order transactions regardless of whether an insolvency situation exists. Proposed Section 6(b) also contains new language that requires that a member that desires to submit a loss to NSCC satisfy the terms and conditions, if any, imposed by NSCC on the close out of the relevant balance order transaction.

The language contained in current Section 2(e) technically only applies non-insolvency scenarios. Under the proposed rule change the language would apply to both insolvency and non-insolvency scenarios and would appear once, in Section 7(a). The language set forth in current Section 2(f) is also set forth in Section 3(f). Under the proposal, it would appear once, in Section 7(f).

The proposed rule change also would add the following terms to NSCC rules: ''CNS Position''; ''Net Close Out Position''; ''RVP/DVP transaction''; and ''RVP/DVP customer''.

DVP/RVP Transactions

The proposed rule change adds a new Section 3, which pertains to CNS or balance order transactions that are wholly executory, RVP/DVP transactions. The RVP/DVP transactions covered by proposed Section 3 are those in which the customer (''RVP/DVP customer'') has executed its purchase and sale transaction with the defaulting broker-dealer (directly, if such defaulting party is a member or through a clearing member if it is not a member) and would have taken delivery of the underlying cash or securities from the defaulting broker-dealer on an RVP/DVP basis at its custodian bank or other depository agent in the absence of the defaulting broker's liquidation.

After NSCC has declined or ceased to act for a member, NSCC would attempt to complete (1) all open RVP/DVP transactions, of which NSCC is aware, to the extent they would not increase the size of the position in any security that NSCC would have to close-out, and (2) any additional open RVP/DVP transactions to the extent deemed appropriate by NSCC's Board of Directors. NSCC's obligation set forth in (1) holds regardless of whether NSCC would gain or lose money by completing such transactions, and any determinations by the NSCC Board to close-out additional RVP/DVP transactions would be made without regard to the potential profit or loss for NSCC in any individual transaction. In

[2] The Commission has modified parts of these statements.

either case, NSCC would have no obligation to complete any open RVP/DVP transaction if: (1) NSCC believe it could not complete all RVP/DVP transactions in the same issue that it would be obligated to attempt to complete under this new provision; (2) there were allegations of fraud with respect to such trades or such trades are otherwise questionable; or (3) NSCC believed such trades could not be completed on a timely basis.

The proposed rule change would require NSCC to provide notice to the trustee or receiver of the member (if, in the case of an insolvent member, one has been appointed) and the relevant RVP/DVP customers or the RVP/DVP customer's depository agent or its depository agent's depository, of the RVP/DVP transactions NSCC intends to attempt to complete. This notice would alert the RVP/DVP customer that completion of any such transaction with NSCC constitutes a presumed waiver by the RVP/DVP customer of any claim arising out of such transactions against the member for whom the NSCC has declined or ceased to act, or in the case of an insolvent member, the receiver or trustee (or any successor trustee) or SIPC. This notice would typically be sent via The Depository Trust Company's electronic message dissemination system.

NSCC believes, that, by allowing it to complete open transactions in an insolvency scenario, the bankrupt estate's market exposure from the open positions would be limited, the potentially large administrative burden of liquidating the open transactions and processing claims by the RVP/DVP customers would be reduced, and the disruptive effect of the liquidation on the affected market participants would be minimized. In addition, any delay in the completion of open RVP/DVP transactions by NSCC during a liquidation, especially in the event of the insolvency of one of NSCC's largest members, would create extremely large and unnecessary short term funding obligations for NSCC.

NSCC believes the proposed rule change is consistent with Section 17A of the Act because the revisions to Rule 18 clarify the actions that NSCC is permitted to take when it declines or ceases to act for a member.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 NSCC 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–98–14 and should be submitted by July 8, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15357 Filed 6–16–99; 8:45 am]

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[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41502; File No. SR–NYSE–99–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 Relating to Original Continued Listing Criteria

June 9, 1999.

I. Introduction

On March 31, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to the NYSE's Listed Company Manual (''Manual'') regarding the original and continued listing criteria and procedures of the Exchange. On April 21, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

Notice of the proposal was published in the **Federal Register** on May 3, 1999.[4] The Commission did not receive any comment letters on the proposal. On May 27, 1999, the NYSE submitted Amendment No. 2 to the proposed rule change.[5] On June 8, 1999, the NYSE submitted Amendment No. 3 to the proposed rule change.[6] In this notice

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated April 21, 1999. In Amendment No. 1, the NYSE resubmitted the entire filing to clarify several aspects of the proposal.

[4] *See* Securities Exchange Act Release No. 41324 (April 22, 1999), 64 FR 23710.

[5] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, SEC, dated May 27, 1999. In Amendment No. 2, the NYSE proposes to amend the international ''cash flow standard'' in the original proposal to require $100 million in aggregate earnings for the last three fiscal years instead of $25 million as is currently the case. Companies would also be required to report a minimum of $25 million in earnings for each of the two most recent years, instead of simply reporting a positive amount of earnings for the last three fiscal years.

[6] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, SEC, dated June 8, 1999. In Amendment No. 3, the NYSE proposes to codify the Exchange's policy regarding the use of financial data to grant eligibility clearance to an issuer that has less than three years of operating history and to clarify that real estate investment trusts and closed-end management investment companies listing with a three-year operating

and order, the Commission is seeking comment from interested persons on Amendment Nos. 2 and 3 and is approving the proposed rule change and Amendment No. 1 as well as Amendment Nos. 2 and 3 on an accelerated basis.

II. Description of the Proposal

The proposal clarifies and codifies the Exchange's criteria and procedures for evaluating a company's original and continued listing eligibility.

A. Original Listing Criteria and Procedures

The NYSE proposes to revise the size component of the Exchange's issuer financial eligibility criteria and the general eligibility listing criteria. The proposal also would codify the Exchange staff's authority to analyze the suitability of an applicant company for listing on the Exchange even if the applicant meets the Exchange's quantitative criteria. Currently, this authority is codified only in the suspension and delisting section of the Manual.

The proposal also would raise the minimum requirement for aggregate market value of publicly-held shares from $40 million to $100 million for all listings other than spin-offs and initial public offerings (''IPOs'')[7] (including carve-outs[8]). The NYSE proposes to raise the standard for spin-offs and IPOs to $60 million.

In addition, the proposal replaces the existing net tangible assets (''NTAs'') test, which is currently the additional measure of a company's size, with a stockholders' equity test ($460 million for IPOs or spin-offs and $100 million for all other domestic listings).[9] The Exchange in determining whether a company satisfies the stockholders' equity test would look to the composition of the stockholders' equity to determine the origination of such equity. The proposal also would clarify that the test is an alternate measure of size to be relied upon where circumstances warrant an alternate measure and where the applicant's public market capitalization is no more than 10 percent below the public market value listing standard. Such circumstances may include situations in which large private holdings drive down the public market capitalization or changing market forces drive down the price of the stock.

Finally, the proposal codifies the NYSE's practice of accepting a written commitment from the underwriter for IPOs (for spin-offs, from the parent company's investment banker or other financial advisor) to demonstrate whether the company satisfies the public market value requirement of $60 million ($100 million worldwide for non-U.S. issuers).

B. Original Financial Listing Criteria and Procedures

The proposal codifies and amends the Exchange's current policies and practices with respect to the financial criteria and policies for domestic companies seeking to list with the Exchange. Currently, a company that seeks to qualify for listing on the Exchange under its domestic standards must meet one of three financial tests. Two of these tests call for an analysis of the company's ''demonstrated earning power under competitive conditions.'' The third test, which only applies to companies with at least $500,000,000 in market capitalization and $200,000,000 in revenues during the most recent fiscal year, analyzes the company's ''demonstrated earning power—adjusted net income,'' as such term is currently defined in the footnotes accompanying the rules.

According to the NYSE, in conducting its review of the financial condition of an applicant company, the Exchange historically has relied upon financial statements presented to it by the company as obtained from SEC filings. If the Exchange relied on the adjustments presented in SEC filings in granting financial clearance to the company, the company would be required to include these adjustments in its original listing application as a condition of eligibility clearance. The proposal codifies the Exchange's financial listing standards and current practices, as well as clarifies and modifies the relevant interpretations.

1. ''Pre-Tax Adjusted Earnings'' Standard

The proposal replaces the current requirement that applicants ''demonstrate * * * earning power under competitive conditions'' with a standard intended to provide more specificity.The proposed standard is ''pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted.'' The term, ''pre-tax earnings'' incorporates the current standard of ''income before federal income taxes.'' The phrase, ''from continuing operations,'' focuses the analysis on ongoing operations and excludes any discontinued operations included in the company's historical financial statements.[10]

The clause, ''after minority interest'' removes the interest of an affiliate of the applicant company accrued to owners other than the applicant company due to its less than 10 percent ownership.[11] The phrase, ''after equity in the earnings or losses of investees,'' arises when an applicant company has an ownership interest in another corporation, the results of which are not consolidated into the applicant company's financial statements due to the application of the governing accounting principles. The results of investments that accrue to the company will be accounted for in the Exchange's analysis to determine

history must satisfy the original listing standards, set forth in paragraph 102.01 of the Manual.

[7] The Exchange proposes to define an IPO as a company that, prior to its original listing, did not have a class of common stock registered under the Act. The Exchange notes that this definition differs from the definition of an IPO in Section 12(f)(1)(G)(i) of the Act, which turns on whether a company has a reporting obligation under the Act prior to a stock offering. Because the Exchange is applying its definition of IPO in the context of the original listing of common stock, the Exchange believes it is more appropriate to focus on the existence of U.S. publicly-traded stock rather than on prior reporting requirements. For example, while a company may have a reporting requirement under the Act if it conducted a public sale of debt securities, that would not be relevant in considering the appropriateness of listing a company's first public class of common stock.

[8] The Exchange proposes to define a carve-out as the initial offering of an equity security to the public by a publicly-traded company for an underlying interest in its existing business (which may be a subsidiary, division, or business unit). In the case of a ''target stock,'' the security is treated in the same way as any other second class of stock of the issuer.

[9] For non-U.S. companies, the $100 million requirement applies to all issuers and will be measured under this proposal in stockholders' equity instead of the current NTA valuation.

[10] The Exchange notes that accounting rules specify that, upon management's commitment to discontinue an operation, financial statements for all relevant periods presented must be restated. If a commitment is made after the period under Exchange review and the historical financial statements have not yet been restated, the Exchange will rely on the company to prepare a presentation of the adjusted data and provide an agreed upon procedures letter provided by the company's outside audit firm. The auditor's letter will state the procedures performed with respect to calculating the pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted giving effect to the discontinuance for each period under review.

[11] For example, where a subsidiary that has a 20 percent privately held (minority) interest, only 80 percent of the interest in the subsidiary is reflected in the public stock. In this scenario, although 100 percent of the subsidiary is consolidated into the applicant parent's operations, the Exchange would make the appropriate adjustment in its analysis to include 80 percent of the earnings in the subsidiary by adjusting the pre-tax income for the reported minority interest provided such minority interest is not included as part of the company's pre-tax income on the face of the financial statement.

whether or not the company is eligible for listing.[12]

Finally, the proposal enumerates certain adjustments that applicants will make to the amount computed pursuant to pre-tax earnings. These adjustments would be part of the proposed standard and, as such, would apply to every listing applicant. Applicant companies may only apply those adjustments arising from events specifically identified in the company's SEC filing(s) as to both categorization and amount. Thus, in order for an adjustment to be appropriately applied, it must be specifically identified and the amount applied must be specifically disclosed in the SEC filing, or subject to an agreed upon procedures letter in certain cases.[13]

a. Use of Proceeds for Retiring Debt or Making Acquisitions

The Exchange currently relies on the use of proceeds anticipated from an equity offering in determining the financial eligibility of a company seeking to list its securities on the Exchange. The Exchange evaluates companies under a three-year eligibility review. In reviewing a company's historical results, the Exchange will continue to consider the effect of the offering on that three-year review period where the proceeds are used to pay existing indebtedness or to fund an acquisition. For deleveragings (*i.e.*, using the proceeds of an offering to pay off debt), the Exchange will conduct its review as if the recapitalization occurred on the first day of the first year of its three-year analysis. In applying the standard, the actual historic interest paid each year on the debt to be retired by the application of the proceeds will be removed, and the principal amount of the debt will be retired. The pro forma effects (*i.e.*, the effects ''as if'' the debt had been retired in an earlier period) of the deleveraging for the latest fiscal year and the interim period will be reflected in the company's SEC filing. If that specific debt was incurred prior to that period, the company would need to prepare adjusted financial statements to account for the relevant preceding periods.[14]

Similarly, with regard to the use of proceeds for acquisitions, the Exchange conducts its review as if the acquisition occurred on the first day of the first year of its analysis, provided the historical financial statements of the acquiree for such period are included in the company's SEC filings. The starting point for this analysis is the company's SEC filing, which will include a pro forma presentation for the latest fiscal year and the subsequent interim period.[15] The Exchange then reviews the historical financials of the company included in the registration statement and treats the acquisition for listing eligibility purposes as if it were consummated on the first day of the earliest fiscal year included in the acquiree's financial statements presented in the filing. The Exchange combines the historical results of the company with the historical results of the acquiree and reflects the purchase accounting of the acquisition for the periods presented. Specifically, the adjustments would be limited to the combination, as well as the allocation of the purchase price including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation) and the effects of any additional financing to complete the acquisition.[16]

b. Acquisitions and Dispositions

In instances other than those associated with the use of proceeds, the proposal limits the Exchange's analysis to those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 and Article 11–01(b)(2) of Regulation S–X. Unlike the use of proceeds to fund an acquisition, in this instance, the adjustment for the acquisition or disposition will be limited to those periods for which pro forma financial data are presented in the SEC filing.[17] If no detailed disclosure is provided for a particular acquisition or disposition, and the acquisition or disposition is only a factual, non-material, un-qualified reference, then the acquisition or disposition will not be given effect because it cannot be substantiated within the four corners of the company's SEC filing.

If the event that the applicant company has less than three years of operating history and is acquiring (either completed or committed) an entity with the requisite operating history, the Exchange will consider the combined operating history of the acquiror and acquiree for the preceding period(s) in conducting its financial eligibility review. If it is necessary to combine historical financial statements of the acquiree and acquiror to enable the Exchange to conduct its analysis (*e.g.*, overlapping fiscal years), then the combined data would need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company.

The NYSE proposes not to require the agreed upon procedures letter if the SEC filing under review makes it self-evident that the company would qualify for listing on the Exchange irrespective of the acquisition or disposition.

c. Merger or Acquisition Related Costs Recorded Under Pooling of Interests

The proposal excludes legal and accounting fees and other costs incurred by a company in effecting a merger or acquiring another entity accounted for as a pooling of interests (whether or not the transaction is consummated).

d. Certain Charges or Income Specifically Disclosed in the Filing

Consistent with the NYSE's past practice, the proposal excludes several items in assessing the applicant company's earnings strength or its cash

[12] This will be effected by including these results from the company's income statement provided such results are not included as part of the company's pre-tax income on the face of the financial statement.

[13] The above-referenced adjustments are measured and recognized in accordance with the relevant accounting literature, such as that published by the Financial Accounting Standards Board (''FASB''), the Accounting Principles Board (''APB''), the Emerging Issues Task Force (''EITF''), the American Institute of Certified Public Accountants (''AICPA''), and the SEC.

[14] Adjustments will not be made on any interest or principal payment(s) made on indebtedness other than that specifically being retired. The proposal requires that this adjustment be accompanied by an agreed upon procedures letter provided by the company's outside audit firm. The auditor's letter will state the procedures performed with respect to the existence of the debt and the accuracy of the adjustments applied to the company's historical pre-tax earnings reflecting the retirement of the principal amount of the debt and the actual historic interest payments made.

[15] This pro forma presentation will give effect to those acquisitions that meet the significance test of SEC Rule 3–05 of Regulation S–X (''Rule 3–05''). Generally, the historical financial statements of the acquiree included in the filing also will be limited to the requisite periods disclosed pursuant the Rule 3–05 significance test.

[16] The Exchange proposes to require that these adjustments, if not set forth in the SEC filing, be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter would state the procedures performed with respect to showing the effect of the relevant acquisition on the applicant company.

[17] If there is a pro forma presentation included in the company's SEC filing that does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, the company must prepare the relevant data. The presentation of the adjusted data will need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm. The auditor's letter will state the procedures performed with respect to showing the effect of the expansion of the pro forma presentation from the SEC filing into a more comprehensive income statements.

flow. These items have been excluded either because they are associated with a company's adopted exit plan (as defined in the accounting literature) or, based on the Exchange's experience in assessing ongoing earnings strength, they are not necessarily recurring.

Charges or Income Related to an Adopted Exit Plan

When a company adopts a specified exit plan, the following charges or income, if disclosed in the company's SEC filing, recorded in the company's financial statements in accordance with generally accepted accounting principles (''GAAP''), and associated with the implementation of that plan, would be excluded by the Exchange in its proposed financial analysis: (1) the costs of severance and termination benefits that are incurred as part of an exit plan; (2) costs and associated revenues and expenses associated with the elimination or reduction of product lines for which an exit plan has been adopted; (3) costs incurred to consolidate, close, or re-locate plant or office facilities associated with an exit plan; and (4) loss or gain on disposal of long-lived assets, which, by its definition, relates to assets that will no longer be held by the company.

Environmental Clean-Up Costs

The NYSE proposes to remove environmental clean-up costs incurred in the remediation of environmental problems from the company's historical financial results. However, companies may not make adjustments for annual maintenance or on-going costs of compliance with environmental laws.

Litigation Settlements

Litigation settlement costs, including any settlement amounts, interest payments and penalties so disclosed in a company's filings would be removed from the company's historic financial results. Companies may not make an adjustment for on-going, customary legal fees.

e. Impairment Charges on Long-Lived Assets

Asset write downs that reflect the net realizable value of a long-lived asset would be excluded from historic financial results.

f. Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock

If a company has an ownership interest in another entity, or has a wholly-owned subsidiary, any gain or loss associated with the sale of all or part of the company's interest would be excluded from the company's historic results.

g. Regulation S–X Article 11 Adjustments

Pro forma adjustments contained in a company's pro forma financial presentation provided in a current filing with the SEC are required to be made in accordance with SEC rules and regulations governing Article 11 ''Pro forma Financial Information.'' The Exchange will review the company's financial statements in the context of any such adjustments, which are subject to SEC review. These adjustments would be limited to the current registration statement as to types of adjustments, amounts and years disclosed (except for use of proceeds as discussed above).

2. ''Adjusted Cash Flow'' Standard

In addition to the Pre-Tax Adjusted Earnings standard discussed above, a second standard is available to companies with at least $500 million of market capitalization and $200 million of revenues in the most recent 12-month period. Companies that meet the size criteria may currently use an ''adjusted net income'' test for the last three fiscal years of at least $25 million in the aggregate, with all years being positive.

The proposal codifies the standard applicable to the companies meeting the above-stated $500 million/$200 million threshold by incorporating the fundamental aspects of the footnote in the current Manual into the rule. In addition, the standard will explicitly indicate that the test includes adjustments for two purposes: the use of proceeds and acquisitions, discussed above. The Exchange is proposing to limit the adjustments incorporated into this standard because the remaining adjustments may or may not have cash-flow implications for a particular company. Those that do have a cash flow effect will already have been accounted for in the operating activity section of the company's cash flow statement.

C. Policy Clarifications

The proposal also adopts several policies clarifying the use of the adjustments enumerated above, requiring the issuance of a press release by companies whose adjusted financial data were relied upon by the Exchange in granting eligibility clearance, and delineating the consequences of restated financial statements.

First, all adjustments must be disclosed as such in the SEC filing of the applicant company—the amount must be within the four corners of the SEC filing or subject to an agreed upon procedures letter, as discussed above. Second, except as noted above,[18] as a general rule, the Exchange will only accept the application of an adjustment in the year in which the event giving rise to the adjustment occurred. Thus, no event can give rise to an adjustment in the financial statements for any prior year.

Third, any company for which the Exchange relies on adjustments to historical financial data in granting financial eligibility clearance must take steps to ensure full public disclosure of how it qualified. The Exchange recognizes that, although listing applications are a matter of public record, many investors may not be aware that they are available and may believe that only the most recent publicly available SEC document is relied upon in evaluating a company. Thus, the proposal imposes two requirements on issuers. First, it codifies the Exchange's requirement that any adjusted financial data relied upon by the Exchange in granting financial clearance to the company must be included in the company's listing application. Second, the proposal requires these issuers to issue a press release stating that pro forma financial adjustments were used to qualify the company and all relevant additional information is available to the public upon request.

With respect to companies that restate financial statements due to a change from unacceptable accounting principles and/or correction of errors, the proposal codifies the Exchange's policy of reviewing the company's status at the time of the restatement. Once a company issues a restatement that affects one of the years used by the Exchange to qualify the company for listing, the Exchange will determine whether or not the company would have qualified at the time of its original financial clearance with the restated numbers. If not, the company will be subject to suspension and delisting procedures unless the company meets the original listing standards at the time of the restatement using the most recent three fiscal years of financial statements as restated.

D. Standards for Non-U.S. Issues

The proposal makes several changes to Section 103 of the Manual pertaining to non-U.S. companies to clarify the rules and to carry forward relevant

[18] The two exceptions are: (1) The use of proceeds for deleveraging and acquisitions and dispositions (for companies currently in registration for an equity offering) and (2) acquisitions and dispositions.

items from the revisions pertaining to domestic companies. Specifically, the NYSE proposed to make adjustments for foreign currency for non-U.S. companies because their operations are inherently tied to the underlying fundamentals of their respective national economies. For purposes of this adjustment, the Exchange deems a currency devaluation of more than ten percent as against the U.S. dollar to be significant. The proposal also increase the aggregate amount from $25 million to $100 million for its adjusted cash flow standard and narrows to two years the requisite itemized annual financial analysis for non-U.S. companies to the two most recent fiscal years, which would be required to be reported at a minimum of $25 million. Reconciliation to U.S. GAAP of the third year back would only be required if the Exchange determines that it is necessary to demonstrate that the aggregate $100 million threshold is satisfied. In addition, for non-U.S. companies, the definition of IPOs is the same as for domestic issues, but the representation of market value to be received in connection with a spin-off may also come from the parent company's transfer agent.

E. Real Estate Investment Trusts

The proposal also codified a policy the Exchange has applied regarding the original listing criteria for real estate investment trusts (''REITs''). The Exchange generally lists REITs either in connection with IPO or shortly thereafter, when the REIT does not have a three-day operating history, so long as the REIT has at least $60 million is stockholders' equity.[19] REITs listing with a three-year operating history must qualify under the standard equity original listing standards.[20]

F. Continued Listing Procedures

The NYSE proposes to revise its continued listing criteria by codifying existing practice with respect to companies that qualify for listing based, at least in part, upon adjusted historical data. Specifically, under the proposed continued listing criteria a company would be subject to delisting if it had NTAs or an aggregate market value of its common stock of less than $12 million and average net income of less than $600,000 for the past three years. In calculating average net income for a company during the initial three years following its listing, the Exchange takes into consideration those specific adjustments made to the company's historical financial data for the relevant year in the original listing application. This consideration is limited both as to the specific adjustment made during the initial clearance as well as to the year in which the adjusted was made.

The Exchange also proposes to revise and codify the procedures instituted when a company is identified by Exchange staff as being below the continued listing criteria. The proposal imposes specific time frames with respect to the notification, monitoring, and suspension and delisting, where appropriate, of these companies' securities. In addition, the proposal modifies the Exchange's current practice of requiring companies to return to original listing standards within 36 months. Instead, the proposal requires these companies to return to good standing within six quarters of being notified of this status.

III. Discussion

The Commission finds that the proposal is consistent with the Act and in particular with those provisions applicable to a national securities exchange.[21] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act[22] because 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, in general, to protect investors and the public interest. The Commission believes that the proposal, by codifying, expanding, and clarifying existing listing criteria and procedures, strikes a reasonable balance between the Exchange's obligation to protect investors and investor confidence in the market, and its parallel obligation to perfect the mechanism of a free and open market. The proposal establishes reasonable procedures for issuers, while giving the Exchange the ability to deny, limit, or delist an issuer that has failed to meet the substantive standards outlined in the NYSE's Manual.

Primarily, the proposal codifies the Exchange's present listing practices and procedures. The general system of Exchange review of applicant companies remains essentially unchanged. In the past, many of these procedures were not codified. As a result, it was often unclear to issuers and other market participants how the Exchange's listing procedures were applied in particular cases. As the proposal sets forth more clearly the listing criteria applicable to issuers, the Commission believes that it should enhance transparency in listing decisions, thereby promoting just and equitable principles of trade and removing impediments to a free and open market.

Specifically, the Exchange clarifies and codifies the size component of the financial eligibility and general eligibility listing criteria and establishes the NYSE's authority to investigate the suitability of an applicant company beyond the Exchange's quantitative criteria. The requisite aggregate market value of publicly-held shares would increase from $40 million to $60 million for spin-offs and IPOs (including carve-outs) and $100 million for all other listings. To demonstrate that the company will satisfy the public market value requirement of $60 million, the proposal codifies the practice of accepting a written commitment from the underwriter for IPOs. Lastly, the proposal replaces the NTA test with a stockholders' equity test, retaining the $60 million and $100 million thresholds and clarifying that the stockholders' equity test is an alternative test for measuring a company's size.

The Commission believes the proposed increases to the threshold requirements should ensure that only companies of a certain minimum size are included among those listed on the Exchange, thereby protecting investors by raising the minimum standard for listed companies. The Commission also believes that it is reasonable for the Exchange to accept a written commitment from the underwriter for IPOs, which, by definition, could not satisfy the requisite minimum aggregate market value of publicly-held shares. Additionally, the Commission believes that the proposed stockholders' equity test is simpler than the existing NTA test and could better reflect a company's value in the current economy because it accounts for intangibles and hard assets, which are frequently found on companies' balance sheets.

The NYSE also proposes to codify and revise its financial eligibility standards for original listing. First, the proposal replaces the current requirement that

[19] For those REITs listing in conjunction with an offering, this requirement would need to be evidenced by a written commitment from the underwriter (or, in the case of a spin-off or carved-out, from the parent company's investment banker or other financial advisor). The Exchange, however, retains the discretion to deny listing to a REIT if it determines that, based upon a comprehensive financial analysis, it is unlikely to be able to maintain its financial status.

[20] *See* Amendment No. 3, *supra* note 6 (adding rule language to clarify that both REITs and closed-end funds with a 3 year operating history must meet original financial listing standards set forth in paragraph 102.01 of the Manual).

[21] In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

applicants ''demonstrate * * * earnings power under competitive conditions'' with a new standard, the ''pre-tax earning from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted.'' The proposal then enumerates the adjustments to be made to the amount computed under the new standard, clarifying that applicant companies may only apply those adjustments arising from events specifically identified in the company's SEC filings as to both categorization and amount. The permissible adjustments include: use of proceeds (for paying off existing debt or funding an acquisition), acquisitions and dispositions, exclusion of merger or acquisition related costs recorded under pooling of interests, exclusion of charges of income specifically disclosed in the applicant's SEC filing for certain enumerated costs, exclusion of impairment charges on long-lived assets, exclusion of gains or losses associated with sales of a subsidiary's or investee's stock, regulation S–X Article 11 adjustments, and exclusion of the cumulative effect of adoption of a New Accounting Standard. These adjustments are measured and recognized in accordance with the relevant accounting literature.

The Commission believes that the new standard more explicitly defines the analysis conducted by the Exchange in evaluating applicant companies. The Commission also believes that by codifying its current practice regarding adjustments, the Exchange increases the transparency of the financial criteria applied to companies seeking to list on the Exchange. The codification of the adjustments also ensures that the financial criteria are applied consistently and are easily auditable, thereby protecting investors and reducing the possibility of unfair discrimination between companies seeking to list on the Exchange.

Second, the proposal clarifies and codifies a second listing standard, available to companies with at least $500 million of market capitalization and $200 million of revenues in the most recent 12-month period. By incorporating the current footnote into the standard itself, the NYSE transforms the ''adjusted net income'' test into the new ''adjusted cash flow'' standard. The new standard also specifies that the adjustments included in this standard are limited to the use of proceeds and acquisitions because the remaining adjustments may not have cash-flow implications for a particular company. The Commission believes that codifying these listing standards increases the transparency of the listing criteria for companies seeking to list on the Exchange. Providing an alternative standard for listing also encourages a free and open market by giving companies that are of a sufficient size an opportunity to list that do not meet the ''pretax earnings'' standard but are otherwise qualified.

The NYSE also proposes several policy clarifications regarding the use of adjustments in the listing process. First, all adjustments must be disclosed as such in the SEC filing of the applicant company, either within the four corners of the SEC filing or subject to an agreed upon procedures letter. Second, adjustments will only be applied in the year in which the event giving rise to the adjustment occurred, except for the use of proceeds for deleveraging and acquisitions and dispositions, and acquisitions and dispositions. Third, companies whose adjusted financial data was relied on by the Exchange in granting eligibility clearance must include all adjusted financial data in the company's listing application and issue a press release to the same effect. The proposal also delineates the Exchange's procedure for reviewing a company's status at the time of a restatement of financial statements, due to a change from unacceptable to acceptable accounting principles and/or correction of efforts, including the consequences of restating financial statements.

The Commission believes that the NYSE's proposal to codify and modify the use of each of these adjustments in the evaluation of applicant companies should provide greater transparency in the listing process. This enhanced transparency should assist all market participants, including prospective companies and investors, in better understanding the significance of the NYSE's decision to list a given issuer on the Exchange.

Specifically, the Commission believes that it is appropriate for the Exchange to limit all adjustments to those disclosed as such in the issuer's filings with the Commission or as subject to an agreed upon procedures letter provided by the issuer's independent outside auditor. Any other adjustments could lack sufficient reliability to be considered by the Exchange in its listing decision. The Commission also believes that it is reasonable to limit the use of adjustments to the year in which the event giving rise to the adjustment occurred, with the two delineated exceptions, because generally, applying such adjustments to prior periods may, to some extent, distort a particular company's financial picture. Finally, the Commission believes that the NYSE's proposal to require companies that were evaluated using adjusted financial data to include all adjusted financial data in their listing applications and to issue press releases about the adjustments is appropriate because such actions should enable potential investors to better understand the companies' financial situation and the manner in which such companies were granted clearance to list on the Exchange.

The NYSE also proposes to revise several aspects of the listing criteria for non-U.S. companies which carry forward relevant items from the revisions pertaining to domestic companies, including: (1) Replacing the NTA test with the stockholder's equity test as an alternative measure of size; (2) using the same definition of IPO's as for domestic issuers, but also allowing the representation of market value required in connection with a spin-off to come from the parent company's transfer agent; and (3) allowing adjustments for foreign currency for a currency devaluation of more than ten percent. With respect to the ''adjusted cash flow'' standard, the proposal increases the aggregate amount to $100 million in operating cash flow, and narrows to two years the requisite itemized annual financial analysis for non-U.S. companies whereby each of the two most recent fiscal years would be required to be reported at a minimum of $25 million in operating cash flow. Reconciliation to U.S. GAAP of the third year back is required only if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100 million threshold is satisfied.

The Commission believes that the proposed changes should provide a better evaluation of a non-U.S. company's financial health, and also simplify the non-U.S. company listing criteria because they parallel the benchmark applied in the pre-tax adjusted earnings standard for non-U.S. companies.[23] The Commission does not believe it is appropriate for the Exchange to impose different listing criteria on non-U.S. issuers given that they may face different financial challenges than those encountered by domestic issuers. The Commission believes that codifying these changes increases transparency for financial criteria applied to non-U.S. companies seeking to list on the Exchange.

The proposal also codifies the Exchange's policy regarding the original listing criteria for REITs. Generally, the Exchange will authorize the listing of a REIT if it has at least $60 million in

[23] *See* Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088.

stockholders' equity, but will not consider those with less than $60 million in stockholders' equity. For those REITs listing in conjunction with an offering, the requirement must be evidenced by a written commitment from the underwriter. Furthermore, the Exchange may deny listing to a REIT if the Exchange determines, based upon comprehensive financial analysis, but the REIT is unlikely to maintain its financial status. REITs with greater than a three-year operating history are subject to the listing criteria described in this proposal.

The Commission recognizes that in many cases the applicant REIT is not a traditional operating entity and therefore, it may not be appropriate to apply the general earnings standards specified in the Exchange's Manual at the time of listing. Thus, the Commission believes that the Exchange's proposed minimum listing criteria of $60 million in stockholders' equity is an acceptable means for screening out those REITs that the Exchange believes are unsuitable for listing due to insufficient assets. The Commission recognizes that the stockholders' equity test is intended as a minimum standard and supports the Exchange's direction to determine that, with respect to a given REIT, notwithstanding sufficient sharholder's equity, the REIT may be unsuitable for listing.

Finally, the NYSE proposes two amendments to its continued listing criteria. First, in calculating average net income for a company during the initial three years following its listing, the Exchange will consider those specific adjustments made to the company's historical financial data for the relevant year in the original listing application. The consideration will be limited to the specific adjustment made during the initial clearance and to the year in which the adjustment was made.

Second, the proposal revises and codifies the procedures instituted when a company is identified by Exchange staff as being below the continued listing criteria by imposing specific time frames with respect to the notification, monitoring, and suspension and delisting of these companies' securities. The proposal also requires that the companies return to good standing by satisfying the continued listing standards within six quarters of being notified of this status.

The Commission believes that proposed revisions and codification of the continued listing criteria should enhance investor protection by ensuring that companies that fail to satisfy the continued listing criteria are identified, reviewed, and then subjected to specified delisting procedures. Moreover, those companies falling below the NYSE's continued listing criteria are provided with transparent, detailed procedures for addressing their status. The Commission notes that proposed changes to NYSE Rule 499 are intended to confirm that rule to the changes proposed to the continued listing criteria in NYSE Rule 802.

The Commission finds good cause for approving proposed Amendment Nos. 2 and 3 prior to the thirtieth day after the day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 2 addresses the ''adjusted cash flow'' standard with respect to non-U.S. companies. The proposal increases the aggregate amount to $100 million, narrows to two years the requisite itemized annual financial analysis for non-U.S. companies whereby each of the two most recent fiscal years would be required to be reported at a minimum of $25 million, and requires reconciliation U.S. GAAP of the third year back only if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100 million threshold is satisfied.[24] The Commission believes Amendment No. 2 is a reasonable mechanism for addressing the differences between non-U.S. and U.S. companies, helps to ensure that the financial criteria applies to non-U.S. companies seeking to list on the Exchange are fully transparent and applied consistently, and encourages a free and open market by allowing non-U.S. companies to list on the NYSE.

In Amendment No. 3, the NYSE proposes to codify the Exchange's policy regarding the use of financial data to grant eligibility clearance to an issuer that has less than three years of operating history and clarifies that REITs and Funds listing with a three-year operating history must qualify under the original listing standards for equity securities. As noticed, the proposed rule change discussed the Exchange's policy regarding the use of financial data to grant clearance to an issuer with less than three years of operating history but the proposal did not codify this policy. The Commission believes that codifying the policy is consistent with the purpose of the Act because it increases the transparency of the financial criteria applied to companies seeking to list on the exchange and ensures that the financial criteria are applied consistently across applicant companies. For these same reasons, the Commission believes it is appropriate for the Exchange to codify the applicable listing criteria for REITs and Funds listing with a three-year operating history, instead of addressing only those situations where a REIT or Fund has less than a three-year operating history. Accordingly, the Commission believes that it is consistent with Section 6 of the Act[25] to accelerate approval of Amendment Nos. 2 and 3.

[24] *See*, not 11, *supra*.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether those amendments are 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–13 and should be submitted by July 8, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19((b)(2) of the Act,[26] that the proposed rule change (SR–NYSE–99–13), as amended, codifying and revising the NYSE's original and continued listing criteria and procedures, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15351 Filed 6–16–99; 8:45 am]

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[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41497; File No. SR–NYSE–98–42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposal Amending MOC/LOC Order Entry and Cancellation Procedures During Regulatory Halts

June 9, 1999.

I. Introduction

On November 25, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend market-on-close (''MOC'') and limit-on-close (''LOC'') order entry and cancellation procedures during regulatory halts. On March 19, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on April 29, 1999.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange utilizes special order entry and cancellation procedures for MOC/LOC orders.[5] This proposed rule change amends the Exchange's MOC/LOC order entry and cancellation procedures during regulatory halts.[6]

1. Cancellation of MOC/LOC Orders During Regulatory Halts

Current MOC/LOC procedures product Exchange members from canceling MOC and LOC orders after 3:40 p.m., except when a member entering an order has made a legitimate error or a member must cancel an order to comply with NYSE Rule 80A(c).[7] Therefore, if a stock is subject to a regulatory halt at 3:40 p.m. or if a regulatory halt is instituted after that time, market participants are prohobited from canceling their MOC or LOC coders in such stock, regardless of whether the stock reopens at a price substantially different from the last sale.

The proposed rule change amends this policy by allowing market participants to cancel MOC or LOC orders if a regulatory halt[8] is in effect at 3:40 p.m. or later. Exchange members will be permitted to cancel MOC or LOC orders until 3:50 p.m. or the reopening of the stock, whichever occurs first.

2. Entry of MOC/LOC Orders During Regulatory Halts

Currently, Exchange procedures only allow members to enter MOC and LOC orders after 3:40 p.m. to offset a published imbalance. If any type of trading halt is in effect at 3:40 p.m., however, MOC/LOC imbalances are not published.[9] Accordingly, no MOC or LOC orders could be entered after 3:40 p.m. during a trading halt. In addition, if a regulatory halt occurs after an imbalance has been published at 3:40 p.m., market conditions may differ substantially from those that existed at the time the imbalance was published.

The proposed rule change amends the Exchange's MOC/LOC order entry procedures when a regulatory halt is in effect at 3:40 p.m. or later. If a regulatory halt is in effect at 3:40 p.m. or later, market participants would be permitted to enter MOC and LOC orders on either side of the market until 3:50 p.m. or until the stock reopens, whichever occurs first. If an order imbalance is published following a regulatory halt, however, MOC and LOC orders may only be entered to offset any imbalance.

3. Order Imbalance Publication After any Trading Halt

Current Exchange policy requires that if a stock reopens at or before 3:50 p.m. following any type of trading halt, the specialist will publish imbalances of 50,000 shares or more (or less than 50,000 shares with the approval of a Floor Official) as soon as practicable after 3:50 p.m. The proposed rule change amends this policy to provide that a specialist must publish imbalances of 50,000 shares or more (or less than 50,000 with Floor Official approval) for stocks opening after 3:50 p.m., if practicable.[10] If a halt occurs after 3:50 p.m., the stock will not reopen on that day and MOC and LOC orders will not be executed.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[12] which requires, among other thigns, that the rules of an exchange be 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, in general, to protect investors and the public interest.

The proposed changes to the Exchange's MOC/LOC order cancellation procedures should allow market participants to make informed trading decisions in response to information disseminated during regulatory halts. Current Exchange

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Donald Seimer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated March 15, 1999 (''Amendment No. 1''). In Amendment No. 1, the Exchange provided information regarding the Exchange's regulatory trading halt policy and clarified that the Exchange does not seek to amend its regulatory trading halt policy in the current proposed rule change.

[4] Securities Exchange Act Release No. 41315 (April 20, 1999), 64 FR 23142.

[5] A description of the Exchange's current procedures can be found in Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 38230 (July 15, 1998); and Exchange Information Memo No. 98–20 (June 22, 1998).

[6] A regulatory condition may exist if news is pending about the stock or if time is needed for news dissemination about a stock. The exchange follows procedures contained in the section on Trading Halt and Suspension Procedures of the Consolidated Tape Association Plan. *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799; and Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414 (July 24, 1980).

[7] Exchange Rule 80A(c) requires index arbitrage orders in any stock in the Standard & Poor's 500 Stock Price Index entered on the Exchange to be stabilizing (*i.e.*, the order must be marked either buy minus or sell plus) when the Dow Jones Industrial Average advances or declines by the 2% point level determined by the Exchange each quarter. Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (February 19, 1999). When Rule 80A(c) goes into effect, a MOC index arbitrage order without the appropriate tick restriction must be canceled unless it is related to an expiring derivative index product.

[8] The proposed rule change does not amend existing MOC/LOC procedures with respect to *non*-regulatory halts.

[9] Specialists are required to publish tape indications to reopen a stock after a trading halt. Current Exchange policy concerning tape indications requires a minimum of ten minutes to elapse between the first indication and the reopening of a stock, and a minimum of five minutes to elapse between the last indication and the reopening of a stock, provided that a minimum of ten minutes has elapsed since the first indication. *See* Securities Exchange Act Release No. 38225 (January 31, 1997), 62 FR 5875 (February 7, 1997); and Exchange Information Memo No. 97–23 (May 8, 1997).

[10] The decision of whether an imbalance shall be published for a stock opening after 3:50 p.m. will be made by an Exchange Floor Director or other Exchange Floor Official. Telephone call between Betsy Lampert Minkin, Senior Project Specialist, NYSE, and Kelly McCormick, Attorney, Division, SEC, on January 13, 1999.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

policy prohibits market participants from canceling MOC or LOC orders after 3:40 p.m. unless a legitimate error was made or the member had to comply with Rule 80A(c). This policy, by precluding market participants from canceling MOC/LOC orders based on information generated during a regulatory halt even if the stock reopened at a price substantially different from the last sale could unnecessarily expose market participants' positions to market risk.

The proposed rule change will allow market participants with pending MOC or LOC orders to react to news generated during a regulatory halt put into effect at 3:40 p.m. or later by enabling them to cancel such orders. A member's ability to cancel a MOC/LOC order after a regulatory halt put into effect at 3:40 p.m. or later is limited, however, to only allow cancellations to be made by 3:50 p.m. or when the stock reopens, whichever is first.

The proposed rule change also amends the Exchange's policy concerning MOC/LOC order entry after 3:40 p.m. Currently, market participants are only permitted to enter MOC or LOC orders after 3:40 p.m. to offset a published imbalance. If any type of trading halt is in effect at 3:40 p.m., no MOC or LOC orders could be entered because imbalances are not published. Moreover, market participants are prohibited from entering orders if a regulatory halt occurs after 3:40 p.m. even if an imbalance has been published. Again, these provisions could unnecessarily expose market participants to market risk.

The proposal would allow market participants to enter MOC or LOC orders after 3:40 p.m. if a regulatory halt has been put into effect at 3:40 p.m. or later. Market participants may enter orders on either side of the market until 3:50 p.m. or until the stock reopens, whichever occurs first. If an imbalance is published following a regulatory halt, however, market participants will only be permitted to enter MOC or LOC orders to offset the published imbalance. The imbalance publication procedure also has been amended to provide that if a stock reopens after 3:50 p.m., the specialist must publish an imbalance of 50,000 shares or more (or less than 50,000 shares with approval of a Floor Official), if practicable. This provision recognizes that from a practical standpoint it may not always be feasible for specialist to publish an imbalance late in the trading day after a trading halt. The proposal will provide specialists with the flexibility to consult with Exchange officials to determine whether such a post trading halt imbalance must be published.

The proposed changes to MOC/LOC order entry and cancellation procedures should promote just and equitable principles of trade because they enable market participants to respond to news disseminated during regulatory halts. The proposed policy should enable market participants to make informed order entry and cancellation decisions based on current, disseminated information. The proposed rule changes, however, limit the ability of market participants to enter or cancel MOC or LOC orders to specific times. The Commission believes that these limitations should provide specialists with adequate time to expedite the orderly closing of their stocks.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–98–42), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15355 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41500; File No. SR–NYSE–99–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 97, ''Limitation on Members' Trading Because of Block Positioning,'' To Permit Member Firms to Net Proprietary Positions Within Aggregation Units and To Except Transactions Offsetting Market Risk That Resulted From Facilitating a Customer's Order

June 9, 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 May 4, 1999, the New York Stock Exchange, Inc. (''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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 97, ''Limitation on Members' Trading Because of Block Positioning.'' First, the Exchange proposes to permit member organizations to determine whether they are long for purposes of Rule 97 by netting their long facilitation position with their other stock positions within the same ''Aggregation Unit.'' [3] Second, the proposed rule change would add an exception to Rule 97 for purchases to offset all or part of the market risk of a position, established previously or contemporaneously, that is economically equivalent to a short position in a stock, provided that such position was established as the result of facilitating a customer order. Third, the Exchange proposes to replace the term ''trading account'' with ''proprietary account'' to clarify that the restrictions of Rule 97 may apply regardless of where the long facilitation position is placed. Finally, the proposed rule change would delete subparagraph (a)(i), the substance of which is included within the meaning of subparagraph (a)(iii).

The following is the text of Exchange Rule 97 marked to reflect the proposed rule change. Additions to the current text appear in italic and deletions appear in brackets.

Limitation on Members' Trading Because of Block Positioning

Rule 97 (a) When a member organization holds any part of a long position in a stock in [its trading] *a proprietary* account resulting from a block transaction it effected with a customer, such member organization may not effect the following transactions for any account in which it has a direct or indirect interest for the remainder of the trading day on which it acquired such position:

[(i) a purchase on a ''plus'' tick if such purchase would result in a new daily high;]

(i)[(ii)] a purchase on a ''plus'' tick within one-half hour of the close;

(ii)[(iii)] a purchase on a ''plus'' tick at a higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iii)[(iv)] a purchase on a ''zero plus'' tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.

For purposes of the restrictions in subparagraph *(ii)* [(iii)] and *(iii)*[(iv)] above, in the case where more than one block was

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* note 6 and accompanying text.

acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

(1) for bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;

(2) to offset a transaction made in error;

(3) to facilitate the conversion of options;

(4) by specialists in the stocks in which they are registered;

(5) to facilitate the sale of a block of stock or a basket of stocks by a customer;

(6) to facilitate an existing customer's order for the purchase of a block of stock, or a specific stock within a basket of stocks, or a stock which is being added to or reweighted in an index, at or after the close of trading on the Exchange, provided that the facilitating transactions are recorded as such and the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's order for such stock; [or]

(7) due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio[.] *or*

(8) to hedge a position that is economically equivalent to a short stock position, provided that (i) the risk to be hedged is the result of a position acquired previously or contemporaneously in the course of facilitating a customer's order, and (ii) the transactions in the aggregate do not exceed the number of shares required to hedge such short position when netted with any long position in the stock as defined in .10 of this Rule.

Supplementary Material

.10 Definitions. A block positioner is a member organization which engages, either regularly or on an intermittent basis, in a course of business of acquiring positions to facilitate the handling of customers' orders on the Floor of the Exchange. For the purposes of this Rule, a block shall mean a quantity of stock having a market value of $500,000 or more which is acquired by a member organization on its own behalf and/or for others from one or more buyers or sellers in a single transaction.

For purposes of this Rule, a ''basket of stocks'' shall mean a group of 15 or more stocks having a total market value of $1 million or more.

For purposes of this Rule, an ''index'' shall mean a publicly disseminated statistical composite measure based on the price or market value of the component stocks in a group of stocks.

For purposes of this Rule, a member organization that holds in a proprietary account any part of a long position in a stock resulting from a block transaction with a customer shall aggregate such long position with all other proprietary positions in such stock that are held within the same Aggregation Unit as such long position. An Aggregation Unit is a defined trading unit within a member organization which meets the conditions set forth in TP File No. 97–42, dated November 23, 1998 issued by the staff of the Securities and Exchange Commission (''No-action Letter''). A member organization which has not established defined Aggregation Units that comply with the No-action Letter shall not aggregate such long position with any other position maintained in the member organization's proprietary accounts, except at the end of the trading day.

.20 Block positioners required to be registered. No member organization shall engage in a course of business as a block positioner unless the Exchange has approved of its so acting and has not withdrawn such approval.

.30 Net capital requirement. A member organization which applies to be registered as a block positioner is required to have and maintain a minimum net capital requirement as defined in Rule 325 of the Exchange of $1,000,000.

.40 Reports by block positioners. Upon of the Exchange a member organization registered with the Exchange as a block positioner shall file a report on Form 97 covering transactions effected on the Floor of the Exchange in connection with block positioning during the period specified in the request. This report is to be sent to Market Surveillance Services, 11 Wall Street, 11th Floor, as promptly as possible but no later than the close of business on the date in which the report is requested to be filed.

.50 Basket Transactions. See paragraph (c)(iv) of Rule 800 (Basket Trading: Applicability and Definitions) in respect of the inapplicability of this Rule to long stock positions resulting from basket transactions.

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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*

Exchange Rule 97 prohibits a member organization that holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer from purchasing, for an account in which the member organization has a direct or indirect interest, additional shares of such stock on a ''plus'' or ''zero plus'' tick under certain conditions for the remainder of the trading day. The Rule defines a ''block'' as a quantity of stock having a market value of $500,000 or more.

Paragraph (b) provides exceptions to the rule for purchases involving bona fide arbitrage or trading in companies involved in a publicly announced merger, acquisition, consolidation or tender offer; to offset error transactions; to facilitate the conversion of options; for transactions by specialists in their specialty stocks; to facilitate the sale of a block of stock or a basket of stock by a customer; to facilitate an existing customer order for the purchase of a block of stock or a stock in a basket of stocks or a stock being added to or reweighted in an index at or after the close of trading on the Exchange; or to increase a proprietary position in a stock which is being added or increasing its weight in a publicly disseminated index, provided that the transactions in the aggregate do not exceed the number of shares required to facilities the customer's purchase of such stock after the close or exceed the number of shares required to rebalance the portfolios.[4]

The Exchange is proposing an additional exception (proposed new paragraph (b)(8)) for purchases to offset all or part of the market risk of a position, established previously or contemporaneously, that is economically equivalent to a short position in the stock, provided that such position was established as the result of facilitating a customer's order. Examples of positions that would be deemed to be economically equivalent to a short position in the stock include a long put option or a short position in a call option, warrant, right or convertible or exchangeable securities. The number of shares purchased to hedge the short position must not exceed the outstanding market risk when such short position is netted with any long position in the stock as defined in .10 of the Rule.

For example, a member organization has sold short to a customer a security which is convertible into 100,000 shares of common stock. Thereafter, it facilitates a block transaction for another customer by buying 40,000 shares of the common stock for the member organization's proprietary account. It seek to hedge its remaining short exposure in the convertible security by buying 60,000 shares of the common stock. Since the member

[4] *See* Release No. 34–40404 (September 4, 1998), 63 FR 49145 (September 14, 1998) (File No. SR–NYSE–98–11).

organization has acquired a long facilitation position (*i.e.*, the 40,000 share purchase), it must now calculate whether it is long for purposes of Rule 97 as described in section .10 of the supplementary material to the Rule. If the firm determines it is long for purposes of Rule 97, it would be limited in the manner by which it could hedge the remaining short market risk. The proposed exception would permit the member organization to purchase up to the amount of its net short exposure without being subject to the tick restrictions of Rule 97.

Rule 97 was adopted due to concerns that a member organization might engage in manipulative practices by attempting to ''mark-up'' or ''peg'' the price of a stock in order to enable the position acquired in the course of block positioning to be liquidated at a profit or to maintain the market at the price at which the position was acquired. A stock purchase which offsets existing short market risk resulting from a facilitation and which does not establish a long position, does not provide an incentive to ''mark up'' or ''peg'' the price of a long stock position previously acquired as a block facilitation trade. Therefore, the Exchange believes that the proposed exception should be adopted.

The Exchange also is proposing to amend section .10 of the supplementary material to the Rule to specify how a member organization that has acquired a long position in a stock as the result of facilitating a customer's block transaction shall determine whether it is long for purposes of Rule 97, *i.e.*, under what circumstances the member organization must aggregate such position with other proprietary positions.

The Commission staff has recently issued a no-action letter [5] setting forth conditions for permitting an individual trading unit (''Aggregation Unit'') in a member organization to calculate its net position in a particular security for purposes of Rule 10a–1 under the Act [6] independently from other Aggregation Units.[7]

Under the proposed amendment to section .10 of the supplementary material to Rule 97, a member organization that has chosen to calculate its net positions by defined Aggregation Units, which meet the conditions set forth by the Commission staff in the 1998 no-action letter, would determine whether it is long for purposes of Rule 97 by netting its long facilitation position with its other stock positions within the same Aggregation Unit. A member organization that has not established defined Aggregation Units that comply with the no-action letter may not net such long position with any short position maintained in the member organization's proprietary accounts, except at the end of the trading day. For such a member organization, the restrictions would apply as long as it held any part of a long facilitation position resulting from a block transaction on the day the position was acquired.

Thus, the restrictions contained in paragraph (a) of the Rule would be triggered only if three conditions are met: (1) the member organization acquired a long position in a stock as the result of facilitating a block trade by a customer on that trading day; (2) the member organization is long for purposes of Rule 97 as defined in section .10 of the supplementary material; and (3) the member organization's purchase on a plus or zero plus tick does not fall under any exception in paragraph (b).

The requirement in section .10 of the supplementary material to aggregate a long block facilitation position with other proprietary positions within the same Aggregation Unit is proposed to be added to the Rule in recognition of current practices of large multi-service broker-dealers where profit and loss are calculated within defined Aggregation Units and each such unit conducts its trading without regard to the positions or activities of other units.

The Exchange is also proposing to replace the term ''trading account'' in paragraph (a) of the Rule with ''proprietary account'' to clarify that the Rule's restrictions may apply regardless of where the long facilitation position is placed, *e.g.*, a facilitation account or a trading account.

In addition, the Exchange is proposing to delete subparagraph (a)(i) (a purchase on a ''plus'' tick if such purchase would result in a new daily high) as it is included within the meaning of subparagraph (a)(iii) (a purchase on a ''plus'' tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day), and renumbering accordingly.

2. Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5)[8] which, in part, calls for exchange rules to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The proposed rule change would define a long position for purposes of Rule 97 in a manner in that the Exchange believes more closely follows industry practice. It would also permit trading by member organizations to offset the risk of the equivalent of a short stock position, and thereby, add depth, liquidity and quality to the market for Exchange securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 N.W., Washington, D.C. 20549–0609. Copies of the submission,

[5] Letter from Richard R. Lindsey, Director, Division of Market Regulation to Roger D. Blanc, Esq., Wilkie Farr & Gallagher, dated November 23, 1998 (TP File No. 97–42).

[6] 17 CFR 240.10a–1.

[7] These conditions include the following requirements: (1) a written plan that identifies each Aggregation Unit, specifies its trading objective, and supports its independent identity; (2) real-time netting by each Aggregation Unit of its positions; (3) reconciling at least once a day of net positions of all Aggregation Units with the firm's net position; (4) individual traders can be assigned to only one Aggregation Unit at any time; and (5) each trader pursuing a particular trading strategy must be included in one Aggregation Unit.

[8] 15 U.S.C. 78f(b)(5).

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 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 Exchange. All submissions should refer to File No. SR–NYSE–99–18 and should be submitted by July 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15359 Filed 6–16–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41506; File No. SR–OCC–99–7]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending OCC's By-Laws Concerning End-of-Month Foreign Currency Options

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 10, 1999, the Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to reconcile a difference between OCC's By-Laws and the Rules of the Philadelphia Stock Exchange (''PHLX'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will reconcile a difference between OCC's By-Laws and PHLX's Rules concerning the expiration date of end-of-month foreign currency options. OCC's By-Laws and PHLX's Rules both provide that end-of-month foreign currency options expire on the last Friday of the expiration month. However, PHLX's Rules provide that if the last Friday of the expiration month is December 31st, the options expire on ''the Friday immediately preceding December 24th.'' [3] OCC's By-Laws provide that if the last Friday of the expiration month is December 31st, the options expire on ''the Friday immediately preceding December 25th.'' [4] OCC's By-Laws also provide that if a foreign currency option expires on a holiday, the expiration date is the business day immediately preceding the holiday.[5]

The respective rules of OCC and PHLX provide for conflicting expiration dates for end-of-month options in 1999. December 31, 1999, is a Friday, so under PHLX's Rules the expiration date would be December 17, 1999, which is the Friday immediately preceding December 24th. Under OCC's By-Laws, the expiration date would ordinarily be December 24th, but this is a holiday, so the date would change to December 23rd. After consultation with PHLX, OCC has agreed that the expiration date for the end-of-month foreign currency options should be December 17, 1999. To implement this change, OCC is amending the definition of ''expiration date'' in Article XV, Section 1 of its By-Laws to provide that the expiration date for end-of-month foreign currency options be the Friday immediately preceding December 24th, rather than December 25th, if December 31st falls on a Friday. This change will ensure that OCC's By-Laws and PHLX's Rules establish the same December expiration date for these options in 1999 and in future years.

OCC believes that the proposed rule change is consistent with Section 17A of the Act[6] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in foreign currency options by ensuring that the expiration date for such options is the same under OCC's By-Laws and PHLX's Rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[7] of the Act and pursuant to Rule 19b–4(f)(4)[8] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] PHLX Options Rule 1000(b)21.(ii).

[4] Article XV, Section 1.E.2(iv) of OCC's By-Laws.

[5] Article XV, Section 1.E.2(v) of OCC's By-Laws.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–7 and should be submitted by July 8, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15356 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41507; File No. SR–OCC–99–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Amendments to the Pledge Program

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 8, 1999, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will permit clearing members to pledge long positions in non-proprietary cross margin accounts through its pledge program. In addition, OCC will update its rules to reflect the way that the pledge program currently operates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC's market maker pledge program was designed to facilitate the ability of clearing members to finance their positions by permitting them to pledge excess long market maker options as collateral to obtain loans from banks or other clearing members.[3] Current eligible account types include, among others, a combined market-makers' account and a separate market-maker's account.

Market-makers, specialists, and registered traders are categories of market professionals that are eligible to have their positions included in a clearing members' non-proprietary cross margin account, and many such market professionals participate in cross margining. OCC believes that it is an appropriate extension of the purposes of the pledge program to permit long options carried in a non-proprietary cross margin account to be pledged to facilitate clearing member financing needs. As a result, under the rule change OCC will amend Rule 614 to add non-proprietary cross margin accounts to the list of accounts that are eligible for the pledge program.

In addition, OCC will update certain of the terms of Rule 614. Some of the practices described in the rule are no longer used, and OCC will eliminate references to those obsolete practices and revise the rule to reflect the current pledge program operation. For example, OCC's system does not ''transfer'' pledge cleared securities into a separate ''pledge account'' as suggested by the rules. Rather, OCC identifies within the ''primary'' account those long positions in a cleared security that a clearing member has instructed OCC that it desires to pledge. In addition, certain instructions or reports are not submitted or distributed by hard copy form but are electronically inputted or disseminated through OCC's C/MACS system. (Hard copy forms are used as acceptable backups should C/MACS be unavailable.) As such, OCC will eliminate reference to ''transfers,'' ''Transfer Day,'' ''Primary Accounts,'' and certain ''forms.'' Instead, OCC will substitute where appropriate more generic terms like ''identifying'' cleared securities to be pledged, ''Activity Day,'' ''Eligible Account,'' ''pledged and unpledged cleared securities,'' and ''instructions'' as being more descriptive of current pledge program processing. In addition, clearing member designations among pledgees can be carried out electronically or through use of the pledgee designation form. The rule will also be amended to reflect this practice.

Further, OCC will eliminate references to lock box distribution of reports. Clearing members receive OCC reports electronically through C/MACS. Other pledges also receive reports by electronic format from OCC or have other arrangements with OCC for purposes of receiving reports. Accordingly, there is no longer any need to refer to lock box report distribution. Instead, report distribution will be accomplished in accordance with the procedures agreed between OCC and each pledgee.

Finally, OCC will change the time at which the release of a pledged cleared security is effective. Currently, the rule provides that the release is deemed to be effective as of 9:00 a.m. (central time) on the transfer day and all rights of a pledgee as to such released cleared security are terminated at that time. However, this effective time comes after OCC nightly processing is completed. During nightly processing, the long positions in cleared securities are released from pledge, included in marginable positions, and used to offset short positions as described in Rules 601 and 602. Pledgee banks have the understanding that when they execute the instructions to release pledged positions they release their rights in the long positions and take appropriate measures to ensure that the loan is repaid or otherwise secured. Accordingly, OCC is proposing to alter the time at which as pledge is deemed to be released. That time will be the

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] For a detailed description of the pledge program, refer to Securities Exchange Act Release No. 19956 (July 19, 1983), 48 FR 33956 [File No. SR–OCC–82–25] (order approving proposed rule change).

cutoff time for submitting the instructions to release pledge positions on the receipt day. OCC believes that this change is consistent with the expectations of clearing members, pledgees, and of OCC as to when each party has rights in the pledged long positions.

In addition to the amendments described above, conforming changes will be made to Rules 601, 602, 1105, and 1106 and to the pledge account agreement.[4]

OCC believes that the proposed rule change is consistent with Section 17A of the Act[5] and the rules and regulations thereunder because it provides for expanded clearing member financing opportunities and updates OCC's pledge program rule to reflect current practices.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 OCC 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–04 and should be submitted by July 8, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15358 Filed 6–16–99; 8:45 am]

BILLING CODE 8010–01–M

[4] OCC attached a copy of the amended pledge account agreement as Exhibit A to its filing, which is available for inspection and copying in the Commission's public reference room and through OCC.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License Nos. 06/76–0317 and 04/74–0263]

TD Origen Capital Fund, L.P. and TD Javelin Capital Fund, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Origen Capital Fund, L.P. (''TD Origen''), 150 Washington Avenue, Suite 201, Santa Fe, New Mexico, 87501, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), and TD Javelin Capital Fund, L.P. (''TD Javelin''), 2850 Cahaba Road, Suite 240, Birmingham, Alabama, 35223, a Federal Licensee under the Act, in connection with the proposed financing of a small concern, are seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. TD Origen and TD Javelin propose to provide equity financing to AmericasDoctor.com, Inc. (''AD.com''), 11403 Cronridge Drive, Suite 200, Owings Mills, Maryland, 21117. The financing is contemplated for product development and working capital.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Tullis-Dickerson Capital Focus II, L.P., an Associate of TD Origen and TD Javelin, together with TD Origen and TD Javelin, currently own greater than 10 percent of AD.com and therefore AD.com is considered an Associate of each of TD Origen and TD Javelin as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.730 (g), in the Owings Mills Times by Tullis-Dickerson Capital Focus II, L.P.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 8, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–15336 Filed 6–16–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3045]

Secretary of State's Arms Control and Nonproliferation Advisory Board

The Charter of the Secretary of State's Arms Control and Nonproliferation Advisory Board is amended and renewed for a period of two years. This Board succeeds and replaces the Arms Control and Disarmament Agency's Director's Advisory Committee, in accordance with the Arms Control and Disarmament Act, as amended (PL 105–277).

The Board advises the Secretary of State on scientific and policy matters relating to arms control and nonproliferation. Operational authority for all activities of the Board, including evaluation and transmission of reports and appointment of members and staff, is delegated to the Under Secretary for Arms Control and International Security and Senior Adviser to the President and the Secretary of State for Arms Control, Nonproliferation, and Disarmament.

The previous Director's Advisory Committee did extensive investigation

and analysis of issues including landmine policy, space policy, verification and compliance, and organizational issues relating to the integration of the Arms Control and Disarmament Agency into the Department of State. The Board continues work in these areas, as well as other aspects of arms control and nonproliferation.

Members of the Board provide a wide range of scientific and policy backgrounds and opinion, while in all cases reflecting extensive experience in arms control and/or nonproliferation.

Because of the sensitive national security material with which the Board deals, its meetings are generally held in closed sessions. However, public notice of the time and place of all meetings is provided, and the Board is open to any public comment that is submitted to it.

Robert Sherman,

Executive Director, Secretary of State's, Arms Control and Nonproliferation Advisory Board.

[FR Doc. 99–15455 Filed 6–14–99; 4:11 pm]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Transportation

Amendment of Noise Compatibility Program Baton Rouge Metropolitan Airport Baton Rouge, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed amendment to the noise compatibility program for Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana, under the provisions of Title 49, USC, Chapter 475 (hereinafter referred to as 'Title 49'') and 14 CFR Part 150 by The City of Baton Rouge and Parish Of East Baton Rouge by and through the Greater Baton Rouge Airport District. This proposed amendment was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Baton Rouge Metropolitan Airport were in compliance with applicable requirements effective on September 9, 1992. The proposed amendment to the noise compatibility program will be approved or disapproved on or before December 7, 1999.

EFFECTIVE DATES: The effective date of the start of FAA's review of the proposed amendment to the noise compatibility program is June 10, 1999. The pubic comment period ends August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Saupp, Airports Division, LA/NM Airports Development Office, ASW–640E, Ft. Worth, Texas, 76193, (817) 222–5640. Comments on the proposed amendment should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed amendment, known as Element 11, to be added to the noise compatibility program for Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana, which will be approved or disapproved on or before December 7, 1999. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted a noise compatibility program that was found by the FAA to be compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit an amendment to the noise compatibility program, after consultation with the concerned public, for FAA approval, which sets forth the measures the airport operator proposes for the reduction of existing noncompatible land uses. Provisions of Title 49 also allow the airport operator, to amend the noise compatibility program to enhance the program.

The FAA has formally received the amendment to the noise compatibility program for Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana. It was requested that the FAA review this material and that the proposed amendment to the noise compatibility plan, to be implemented by the airport within the surrounding communities, be added to the noise compatibility program under Title 49. Preliminary review of the submitted material indicates that it conforms to the requirements for an addition to the noise compatibility program, but that further review will be necessary prior to approval or disapproval of the proposed Element 11. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 7, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process was whether the proposed measure may reduce the level of aviation safety, create an undue hardship on interstate or foreign commerce, or be reasonably consistent with attaining the goal of reducing existing noncompatible land uses.

Interested persons are invited to comment on the proposed Element 11 with specified reference to these factors. The FAA, to the extent practicable, will consider all comments, other than those properly addressed to local land use authorities. Copies of the proposed Element 11 of the noise compatibility program are available for examination at the following locations;

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137, (817) 222–5640

O'Brien-Krietzberg, 9132 Veterans Memorial Blvd., Baton Rouge, LA 70807, (225) 358–4240

Questions and requests for any further information may be directed to the individuals named above.

Issued in Fort Worth, Texas, June 10, 1999.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 99–15392 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–17]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 8, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal

Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29354
Petitioner: Fairchild Aircraft Incorporated
Section of the FAR Affected: 14 CFR 25.785(b)
Description of Relief Sought: To permit side facing divans on Dornier Model 328–100 airplanes.

Docket No.: 29495
Petitioner: Osprey Air I
Section of the FAR Affected: 14 CFR 43.3(a) and (g) and paragraph c of Appendix A of part 43
Description of Relief Sought: To permit pilots employed by Osprey to perform those preventive maintenance functions listed in paragraph c of Appendix A of part 43 on aircraft operated under 14 CFR part 135.

Docket No.: 29496
Petitioner: Blue Mountain Lodge
Section of the FAR Affected: 14 CFR 43.3(a) and (g) and paragraph c of Appendix A of part 43
Description of Relief Sought: To permit BML's pilot to perform the preventive maintenance functions listed in paragraph c of Appendix A to part 43 on aircraft operated under 14 CFR part 135.

Dispositions of Petitions

Docket No.: 24446
Petitioner: Air Transport Association of America
Section of the FAR Affected: 14 CFR 121.485(b)
Description of Relief Sought/Disposition: To permit ATA-member airlines and other similarly situated part 121 air carriers to conduct flights of less than 12 hours duration with an airplane having a flightcrew of three or more pilots and an additional flight crewmember without requiring the rest period following that flight to be twice the hours flown since the last rest period at each flight crewmember's home base.
GRANT, 4/30/99, Exemption No. 4317G

Docket No.: 25988
Petitioner: Soloy Corporation
Section of the FAR Affected: 14 CFR 21.19(b)(1)
Description of Relief Sought/Disposition: To permit Soloy to apply for a supplemental type certificate (STC) for a design change that would convert the Cessna Caravan from a one-engine aircraft to a two-engine aircraft using the STC process.
GRANT, 4/14/99, Exemption No. 6888

Docket No.: 26599
Petitioner: Regional Airline Association
Section of the FAR Affected: 14 CFR 91.203
Description of Relief Sought/Disposition: To permits RAA-member airlines to temporarily operate certain U.S.-registered aircraft in domestic airline operations without the certificates of airworthiness or registration onboard the aircraft.
GRANT, 4/27/99, Exemption No. 5515D

Docket No.: 28179
Petitioner: Washington Flight Program
Section of the FAR Affected: 14 CFR 121 Appendices I and J, 135.251, and 135.255
Description of Relief Sought/Disposition: To permit FAA Washington Flight Program to use the substance abuse and drug testing program mandated by Department of Transportation Order No. 3910.1C, ''The Drug and Alcohol-Free Departmental Workplace,'' for its management, pilot, and maintenance personnel, in lieu of certain drug and alcohol program requirements contained in part 121 and part 135.
GRANT, 4/20/99, Exemption No. 6074B

Docket No.: 28545
Petitioner: United Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.135(a)93)
Description of Relief Sought/Disposition: To permit United to use electronic digital technology to document the revision of level in lieu of printing the last revision date on each page of the manual
GRANT, 4/21/99, Exemption No. 6612A

Docket No.: 29042
Petitioner: Schwartz Engineering Company
Section of the FAR Affected: 14 CFR 21.183(f) and 25.2(b)
Description of Relief Sought/Disposition: To permit Schwartz Engineering Company type and airworthiness certification of a Boeing Model 757–200 airplane with adjacent exists further than 60 feet apart.
GRANT, 4/29/99, Exemption No. 6710B

Docket No.: 29349
Petitioner: Texas Aero Engine Service, L.L.C.
Section of the FAR Affected: 14 CFR 43.9(a)(4)
Description of Relief Sought/Disposition: To permit TAESL to use computerized personal identification codes in lieu of physical signatures required to issue airworthiness releases and/or approvals for return to services of aeronautical products it maintains for its repair station customers.
GRANT, 4/21/99, Exemption No. 6890

Docket No.: 29383
Petitioner: Ilyushin Aviation Complex
Section of the FAR Affected: 14 CFR 25.562(b)(2)
Description of Relief Sought/Disposition: To exempt Ilyushin Aviation Complex from the floor warpage test requirements of 25.562(b)(2) for flight deck seating.
PARTIAL GRANT, 4/13/99, Exemption No. 6887612A

Docket No.: 29348
Petitioner: Boeing Commercial Airplane Group
Section of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought/Disposition: To permit Boeing to conduct a 3400 psig test of the modified portions of the hydraulic system on the Boeing Model 767–400ER airplane.
GRANT, 4/8/99, Exemption No. 6886

Docket No.: 29427
Petitioner: Boeing Commercial Airplane Group
Section of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought/Disposition: To permit Boeing type certification of Boeing Model 737–700C by testing only the hydraulic tubing added for the 737–700 Main Deck Cargo Door system at just below 3400 psig, the system relief pressure.
GRANT, 4/15/99, Exemption No. 6889

Petition for Exemption

Docket No.: 29354
Petitioner: Fairchild Aircraft Incorporated
Regulations Affected: 25.785(b)
Description of Petition: To permit side-facing divans on Dornier Model 328–100 airplanes.

[FR Doc. 99–15394 Filed 6–16–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

DATES: The meeting will be held July 13–14, 1999, beginning at 9 a.m. on July 13. Arrange for oral presentations by July 6.

ADDRESSES: The meeting will be at the Department of Transportation, Nassif Building, Room 8236–40, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence

Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee at the Department of Transportation, Nassif Building, Room 8236–40, 400 7th Street, SW., Washington, DC.

The agenda will include:

- Opening remarks, introduction of new members.
- Review of March meeting minutes and actions items.
- Presentation on Airplane Design, Certification, and Continuing Surveillance.
- Presentation on Maintenance Plan—Updates on Society of Automotive Engineers and Maintenance Steering Group, Revision 3 Process.
- Presenation on Aging Systems Definition.
- Task 1—Electrical and Nonelectrical Systems Inspections Working Group Report.
- Task 2—Service Data Review Working Group Report.
- Status of Working Group Assignments.
- Review/Validate Tasking Statements and Schedules.
- Review Action Items.
- Additional Issues and Concerns.
- Future Meetings.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by July 6, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on June 11, 1999.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 99–15391 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for June 29 and 30, 1999, beginning at 8:30 a.m. on June 29. Arrange for oral presentations by June 22.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 29–30, 1999, at the Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

The agenda will include:

Tuesday, June 29, 1999

- Opening Remarks
- FAA/Joint Aviation Authorities (JAA) Harmonization Meeting Report
- FAA Report
- JAA Report
- Transport Canada Report
- Harmonization Program Plan Update
- Seat Test Harmonization Working Group (HWG) Report
- Flight Test HWG Report and Approval of Work Plan
- Ice Protection HWG Report
- Engine HWG Report and Vote
- Airworthiness Assurance Working Group Report and Vote
- Powerplant Installation HWG
- System Design and Analysis HWG
- Flight Guidance System HWG Report

Wednesday, June 30

- Aging Systems Update
- General Structures HWG Report and Vote
- Electromagnetic Effects HWG Report and Vote
- Loads and Dynamics HWG Report and Approval of Work Plan
- Flight Control HWG Report
- Electrical Systems HWG Report
- Mechanical Systems HWG Report
- Review Action Items

Both the Flight Test HWG and the Load and Dynamics HWG plan to seek approval of work plans. The Airworthiness Assurance Working Group plans to request a vote to submit to the FAA a final report entitled ''Recommendations for Regulatory Action to Prevent Widespread Fatigue Damage in the Commercial Airplane Fleet.''

Three working groups plan to request a vote for formal FAA legal and economic reviews:

- The Engine HWG plans to present a proposed notice addressing aircraft engine standards overtorque limits;
- The Electromagnetic Effects HWG plans to present a proposed notice and advisory circular addressing lightning protection; and
- The General Structures HWG plans to present proposed notices and advisory circulars addressing casting factors and fuel tank access doors. The working group also plans to present, for legal review only, an advisory circular addressing windshields and windows.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by June 22 to present oral statements at the meeting. Written statements may be presented to the Committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on June 11, 1999.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–15390 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

DATES: The meeting is scheduled for July 1, 1999, beginning at 10 a.m.

Arrange for oral presentations by June 24.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on July 1, 1999, at the Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

The agenda will include:

- Opening remarks.
- FAA/JAA Harmonization Meeting Report.
- JAA Report.
- FAA Report.
- Performance Standards Working Group (PSWG) Report and Vote.

The PSWG plans to request a vote for formal FAA legal and economic reviews of a proposed notice addressing means of illumination to assist people descending from an airplane to the ground.

Attendance is open to the public, but will be limited to space available. The public must make arrangements by June 24 to present oral statements at the meeting. Written statements may be presented to the committee any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangement may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on June 11, 1999.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–15393 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Program Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions form the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 2, 1999.

ADDRESSES: Address comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
6293–M	.....	Dyno Nobel, Inc., Salt Lake City, UT (See Footnote 1)	6293
8495–M	.....	Walter Kidde Aerospace, Wilson, NC (See Footnote 2)	8495
10440–M ..	.....	MASS Systems, Inc., Baldwin Park, CA (See Footnote 3)	10440
10858–M ..	.....	Ashland Speciality Chemical Company, Columbus, OH (See Footnote 4)	10858
10962–M ..	.....	International Compliance Center, Mississauga ON L4Z 1X8, CA (See Footnote 5)	10962
11186–M ..	.....	Cryenco, Inc., Denver, CO (See Footnote 6)	11186
11344–M ..	.....	E.I. DuPont de Nemours and Company, Wilmington, DE (See Footnote 7)	11344
11373–M ..	.....	Independent Chemical Company, Glendale, NY (See Footnote 8)	11373
11458–M ..	.....	Reckitt & Colman, Inc., Wayne, NJ (See Footnote 9)	11458
11537–M ..	.....	ROBCHEM, Inc., Los Angeles, CA (See Footnote 10)	11537
11537–M ..	.....	Milport Enterprises, Inc., Milwaukee, WI (See Footnote 11)	11537
11631–M ..	.....	Health Care Incinerators, Inc., Fargo, ND (See Footnote 12)	11631
11769–M ..	.....	Great Western Chemical Company, Portland, OR (See Footnote 13)	11769
12013–M ..	RSPA–1997–3249	Hawkins Chemical, Inc., Minneapolis, MN (See Footnote 14)	12013
12093–M ..	RSPA–1998–4003	Dynatherm Corporation, Inc., Hunt Valley, MD (See Footnote 15)	12093
12275–M ..	RSPA–1999–5834	Medico Environmental Services, Inc., Clearwater, FL (See Footnote 16)	12275

[1] To modify the exemption to allow for DOT–412 cargo tank motor vehicles, equipped for top loading and unloading only, for the transportation in commerce of specific Class 8 materials.

[2] To modify the exemption to include the use of an alternative fire extinguishing agent, pentafluoroethance, in a non-DOT specification cylinder.

[3] To modify the exemption to increase service pressure not to exceed 3100 psig for the welded austenitic stainess steel non-DOT specification cylinder.

[4] To modify the exemption to allow for additional Class 3 materials in DOT specification tank cars.

[5] To modify the exemption to provide for Class 9 as an additional class of material in motor vehicles which are not placarded DANGEROUS WHEN WET.

[6] To modify the exemption to provide for nitogen as an alternative test medium; increase the inner tank design pressure to 350 psig for a non-DOT specification insulated portable tank transportating Divisions 2.1 and 2.2 materials.

[7] To modify the exemption to authorize Divisions 2.1, 2.2, 6.1, and those hazardous materials currently authorized to be shipped in tank cars.

[8] To modify the exemption to update the description for self-heating material, Division 4.2, on the same transport vehicle with Class 8 liquids when the materials are separated.
[9] To modify the exemption to allow for the use of intermodal road railers for the transportation of Classes 2, 3, 8, 9 and Division 5.1 consumer commodities in packages that exceed the 30 kg gross weight limit.
[10] To modify the exemption to provide for additional Class 8 materials in IBCs that are securely mounted to a flatbed trailer, but not removed from the vehicle prior to the unloading of the container.
[11] To modify the exemption to provide for semi-trailers and box trucks securely mounted to a flatbed trailer, but not removed from the vehicle prior to unloading for the transportation of certain Class 8 materials.
[12] To modify the exemption to provide for a design change of the intermediate packaging to allow for a 2.5 mil poly bag, closed to be liquid-tight, for use in transporting medical waste in bulk bins.
[13] To modify the exemption to authorize Division 5.1 and additional Class 8 materials from truck-mounted UN31HH1 IBCs with capacities not exceeding 330 gallons and to allow for UN-marked, compatible IBCs having capacities not exceeding 550 gallons.
[14] To modify the exemption to provide for additional Class 8 materials in IBCs without removing tanks from the vehicles on which they are transported.
[15] To modify the exemption to allow for design changes of the non-DOT specification containers containing certain Divisions 2.1, 2.2 and 2.3 liquefied and compressed gases.
[16] To reissue the exemption originally issued on an emergency basis for the transportation of regulated medical waste in non-DOT specification packaging consisting of a bulk outer container and non-bulk inner packagings.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b).

Issued in Washington, DC on June 10, 1999.

R. Ryan Posten,

Exemptions Programs Officer, Office of Hazardous Materials Exemptions & Approvals.

[FR Doc. 99–15379 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2 —Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 19, 1999.

ADDRESSES: Address comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 10, 1999.

R. Ryan Posten,

Exemption Programs Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12277–N ..	RSPA–1999–5797.	The Indian Sugar & General Engineering Corp. ISGE Haryana, IN.	49 CFR 173.3, 173.304.	To authorize the manufacture, marking and sale of non-DOT specification cylinders (pressure vessel) for use in transporting Chlorine, Division 2.3 material. (modes 1, 2)
12278–N ..	RSPA–1999–5762.	Morton International Chicago, IL.	49 CFR 173.243	To authorize the transportation in commerce of composite intermediate bulk containers meeting UN design type 31HA1 for the shipment of Thioglycol, classed as a Division 6.1, PG II material. (modes 1, 2)
12280–N ..	RSPA–1999–5764.	Combined Tactical Systems, Inc. Jamestown, PA.	49 CFR 172.101 (6, 172.402(e).	To authorize the transportation in commerce of Division 1.4S material with a subsidiary 6.1 hazard to be transported without subsidiary label applied to outer packagings. (mode 1)
12281–N ..	RSPA–1999–5765.	ABS Group Inc. Houston, TX	49 CFR 178.27–5(b)(2).	To authorize the use of an equivalent mild steel thickness of 6.0 mm for IM 101 portable tanks with a diameter greater than 1.8m in relief of the 6.35 mm thickness of the current requirement for use in transporting presently authorized hazardous materials. (modes 1, 2, 3)
12282–N ..	RSPA–1999–5766.	Defense Technology Corp. Casper, WY.	49 CFR 173.302	To authorize the manufacture, marking and sale of compressed gas, Division 2.2, in non-DOT specification cylinders comparable to DOT-Specification 39. (modes 1, 2, 4)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12285–N ..	RSPA–1999–5828.	Biotech Research Laboratories, Inc. Gaithersburg, MD.	49 CFR 173.196, 178.609.	To authorize the transportation in commerce of biological specimens classed as Infectious substance (Etiologic agent) in specifically designed packagings inside mechanical freezers and walk-in-cold boxes. (mode 1)
12286–N ..	RSPA–1999–5827.	FMC Corporation Philadelphia, PA.	49 CFR 180.509	To extend the retest period for DOT–111A60W7 tank cars in dedicated hydrogen peroxide service (Division 5.1). (mode 2)

[FR Doc. 99–15380 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33749 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33749 [1] to permit the trackage rights to expire on August 28, 1999.

DATES: This exemption is effective on July 17, 1999. Petitions to reopen must be filed by July 7, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33749 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative, Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 9, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–15451 Filed 6–16–99; 8:45 am]

BILLING CODE 4910–01–M

[1] On May 21, 1999, Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead rights to UP over BNSF's rail line known as the Madill Subdivision between Carrollton, TX, BNSF milepost 700.17, and South Joe, TX, BNSF milepost 633.0, a total distance of approximately 67.5 miles. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33749 (STB served June 1, 1999). The trackage rights operations under the exemption became effective on May 28, 1999, 7 days after the verified notice was filed, and are subject to standard labor protective conditions. The exemption is scheduled to be consummated on or shortly after June 21, 1999. The trackage rights agreement is scheduled to expire August 28, 1999.

Federal Register

Thursday
June 17, 1999

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6346–8]

RIN 2060–AE34

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and National Emission Standards for Hazardous Air Pollutants: Natural Gas Transmission and Storage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: These promulgated national emission standards for hazardous air pollutants (NESHAP) limit emissions of hazardous air pollutants (HAP) from oil and natural gas production and natural gas transmission and storage facilities. These final rules implement section 112 of the Clean Air Act (Act) and are based on the Administrator's determination that oil and natural gas production and natural gas transmission and storage facilities emit HAP identified on the EPA's list of 188 HAP.

The EPA estimates that approximately 69,000 megagrams per year (Mg/yr) of HAP are emitted from facilities in these source categories. The primary HAP emitted by the facilities covered by these final standards include benzene, toluene, ethyl benzene, mixed xylenes (collectively referred to as BTEX), and n-hexane. Benzene is carcinogenic and has also been shown to cause various adverse health effects other than cancer (i.e., noncancer effects). The other four HAP are not classified as carcinogens based on available information; however, exposures to these four HAP have been shown to cause various noncancer effects.

The EPA estimates that these promulgated NESHAP will reduce HAP emissions from major sources in the oil and natural gas production source category by 77 percent and from major sources in the natural gas transmission and storage source category by 95.0 percent.

EFFECTIVE DATE: This regulation is effective June 17, 1999. See **SUPPLEMENTARY INFORMATION** concerning judicial review.

ADDRESSES: *Docket.* A docket, No. A–94–04, containing information considered by the EPA in developing the promulgated standards for the oil and natural gas production and natural gas transmission and storage source categories, is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall. The promulgated regulations, background information document (BID) volumes 1 and 2, and other supporting information are available for inspection and copying. A reasonable fee may be charged for copying.

Responses to Comments Document. The responses to comments document for the promulgated standards may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777, or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 605–6000 or (800) 553–6847 or via the Internet at www.fedworld.gov/ntis/ntishome.html. Please refer to ''National Emissions Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage—Background Information for Final Standards: Summary of Public Comments and Responses'' (EPA–453/R–99–004b, May 1999). The document contains the following: (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments and (2) a summary of the changes made to the standards since proposal. This document is also available for downloading from the Technology Transfer Network (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: For information concerning today's action, contact Mr. Greg Nizich, Waste and Chemical Processes Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone: (919) 541–3078; facsimile: (919) 541–0246; or electronically at: nizich.greg@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Condensate tank batteries, glycol dehydration units, natural gas processing plants, and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by these actions. This table lists the types of entities that the EPA is now aware could potentially be regulated by these actions. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by these actions, you should carefully examine the applicability criteria in sections 63.760 and 63.1270 of the rules. If you have questions regarding the applicability of these actions to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technology Transfer Network. This document, the final regulatory texts, and BID volumes 1 and 2 are available in Docket No. A–94–04 from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). They can also be accessed through the EPA's Technology Transfer Network (TTN) Internet web site at: http://www.epa.gov/ttn/oarpg.

Judicial Review. National emission standards for hazardous air pollutants for facilities in the oil and natural gas production and natural gas transmission and storage source categories were proposed in the **Federal Register** on February 6, 1998 (63 FR 6288). This **Federal Register** action announces the EPA's final decisions on the rules. Under section 307(b)(1) of the Act, judicial review of the NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these final rules. Under section 307(b)(2) of the Act, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Preamble Outline. The following outline is provided to aid in reading the preamble to the promulgated oil and natural gas production and natural gas transmission and storage NESHAP.

I. Background
II. Summary of Considerations in Developing the Rules
  A. Purpose of the Regulations
  B. Technical Basis of the Regulations
  C. Stakeholder and Public Participation
III. Summary of Promulgated Standards
  A. Promulgated Standards for Oil and Natural Gas Production for Major Sources
  B. Promulgated Standards for Natural Gas Transmission and Storage for Major Sources
  C. Recordkeeping and Reporting Provisions
IV. Summary of Impacts
  A. HAP Emission Reductions
  B. Secondary Environmental Impacts
  C. Energy Impacts
  D. Cost Impacts

E. Economic Impacts
V. Significant Comments and Changes to the Proposed Standards
A. Definition of Facility
B. Definition of ''Associated Equipment''
C. Applicability
D. Glycol Dehydration Unit Process Vent Standards
E. Storage Vessel Standards
F. Standards for Natural Gas Transmission and Storage
G. Monitoring, Recordkeeping, and Reporting Requirements
H. Cost and Economic Impacts
VI. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866: A Significant Regulatory Action Determination
D. Regulatory Flexibility Act
E. Congressional Review Act
F. Unfunded Mandates Reform Act
G. Executive Order 12875: Enhancing the Intergovernmental Partnership
H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
J. National Technology Transfer and Advancement Act

The following conversions from metric to English units are provided to aid in reading the preamble to the promulgated oil and natural gas production and natural gas transmission and storage NESHAP.

Metric values	Equivalent English values
0.31 cubic meter per liter (m^3/liter)	1,750 standard cubic feet per barrel (ft^3/barrel).
39,700 liter/day	250 barrels per day (bpd).
79,500 liter/day	500 bpd.
0.90 Megagrams per year (Mg/yr)	1.0 ton per year (tpy).
18.4 thousand cubic meters per day (m^3/day)	650 thousand cubic feet per day (scf/day).
28.3 thousand m^3/day	1 million scf/day (MMscf/day).
85 thousand m^3/day	3 MMscf/day.
283 thousand m^3/day	10 MMscf/day.

I. Background

Section 112(b) of the Act lists 188 HAP and directs the EPA to develop rules to control all major and some area sources emitting HAP. On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be published (i.e., the source category list). Oil and natural gas production facilities were listed as a category of major sources.

The EPA included natural gas transmission and storage facilities in the proposed initial listing of source categories that was published in 1991. Comments received on the proposed initial list indicated that this source category did not contain major sources of HAP. As a result, natural gas transmission and storage facilities were not included as a distinct source category in the July 1992 final list of source categories of major sources of HAP.

During the development of the standards for the oil and natural gas production source category, information was obtained on glycol dehydration unit HAP emissions that are representative of both oil and natural gas production facilities and natural gas transmission and storage facilities. The information indicated that natural gas transmission and storage facilities have the potential to be major HAP sources. In addition, representatives of the natural gas transmission and storage source category stated to the EPA that there are major source glycol dehydration units in the source category. Therefore, the EPA amended the source category list on February 12, 1998 (63 FR 7155) to add natural gas transmission and storage as a major source category.

On February 6, 1998, the EPA also gave notice of its intention to add oil and natural gas production as an area source category (63 FR 6291), but did not amend the source category list to include such a category. In order to ensure that regulations applicable to the area source category are consistent with the Urban Air Toxics Strategy, to be implemented under section 112(k) of the Act, the EPA has deferred the regulation of oil and natural gas production facilities which are area sources until the Urban Air Toxics Strategy is finalized. The EPA expects this strategy to be finalized later this year.

II. Summary of Considerations in Developing the Rules

A. Purpose of the Regulations

The Act was developed, in part,

* * * to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population [the Act, section 101(b)(1)].

Oil and natural gas production and natural gas transmission and storage facilities are major and area sources of HAP emissions. The EPA estimates that approximately 67,000 Mg/yr of HAP are emitted from facilities in the oil and natural gas production source category and 2,100 Mg/yr of HAP are emitted from facilities in the natural gas transmission and storage source category. The primary HAP associated with oil and natural gas that have been identified include BTEX and n-hexane. Exposure to these chemicals has been demonstrated to cause adverse health effects. The likelihood of these adverse health effects depends on the range of ambient concentrations and the amount, frequency, and duration of exposures. The ambient concentrations are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Exposure and health impacts due to the ambient concentrations are dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., the presence of pre-existing disease), lifestyle, location of residence, activity patterns, and other factors.

Benzene, one of the HAP associated with these NESHAP, is classified as a known human carcinogen based on convincing human evidence (such as observed increases in the incidence of leukemia in exposed workers), as well as supporting evidence from animal studies. In addition, short-term inhalation of high benzene levels may cause nervous system effects such as drowsiness, dizziness, headaches, and unconsciousness in humans. At even higher concentrations of benzene, exposure may cause death, while lower concentrations may irritate the skin, eyes, and upper respiratory tract. Long-term inhalation exposure to benzene may cause various disorders of the blood, and toxicity to the immune system. Reproductive disorders in women, as well as developmental effects in animals, have also been reported for benzene exposure.

Short-term inhalation of relatively high concentrations of toluene by humans may cause nervous system effects such as fatigue, sleepiness, headaches, and nausea, as well as

irregular heartbeat. Repeated exposure to high concentrations may cause additional nervous system effects, including incoordination, tremors, death of brain cells, involuntary eye movements, and may impair speech, hearing, and vision. Long-term exposure to toluene by humans has also been reported to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children whose mothers have been exposed to high levels of toluene before birth may suffer nervous system dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may also increase the risk of spontaneous abortion. Not enough information exists to determine toluene's carcinogenic potential.

Short-term inhalation of high levels of ethyl benzene by humans may cause throat and eye irritation, chest constriction, and dizziness. Long-term inhalation of ethyl benzene by humans may cause blood disorders. Animal studies have reported blood, liver, and kidney effects associated with ethyl benzene inhalation. Birth defects have been reported in animals exposed via inhalation; whether these effects may occur in humans is not known. Not enough information exists concerning ethyl benzene to determine its carcinogenic potential.

Short-term inhalation of high levels of mixed xylenes (a mixture of three closely-related compounds) by humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of high levels of xylene in humans may result in nervous system effects such as headaches, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal heart functioning, and possible effects on the blood and kidneys. Developmental effects have been reported in animals from xylene exposure via inhalation. Not enough information exists to determine the carcinogenic potential of mixed xylenes.

Short-term inhalation of high levels of n-hexane by humans may cause mild central nervous system effects (dizziness, giddiness, slight nausea, and headache) and irritation of the skin and mucous membranes. Long-term inhalation exposure to high levels of n-hexane by humans has been reported to cause nerve damage expressed as numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. Reproductive effects have been reported in animals after inhalation exposure (testicular damage in rats). Not enough information exists concerning n-hexane to determine its carcinogenic potential.

The EPA estimates that the NESHAP will reduce HAP emissions from those impacted HAP emission points in the oil and natural gas production source category by 77 percent and will reduce HAP emissions from impacted glycol dehydration units in the natural gas transmission and storage source category by 95.0 percent.

B. Technical Basis of Regulations

Section 112 of the Act regulates stationary sources of HAP. Section 112(b) of the Act lists 188 chemicals, compounds or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emission of HAP from stationary sources by establishing national emission standards.

Section 112(a)(1) of the Act defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

An area source is defined as a stationary source that is not a major source.

For major sources, the statute requires the EPA to establish standards that reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT). Further, the EPA is required to establish standards that are no less stringent than the level of control defined under section 112(d)(3) of the Act, often referred to as the MACT floor. The final standards for major sources in the oil and natural gas production and natural gas transmission and storage source categories are based on the MACT floor for these source categories.

Prior to proposal, information on industry processes and operations, HAP emission points, and HAP emission reduction techniques were collected through section 114 questionnaires that were distributed to companies in the oil and natural gas production and natural gas transmission and storage source categories. These companies provided information on their representative facilities.

This information was used, in part, as the technical basis for determining the MACT level of control for the emission points covered under the final standards. In addition to information collected in the questionnaires, the EPA considered information available in the general literature, information submitted by industry on technical issues subsequent to the questionnaire responses, and additional information received during the public comment period for the proposed rules, in developing the final rules.

C. Stakeholder and Public Participation

In the development of these final standards, numerous representatives of the oil and natural gas production industry, the natural gas transmission and storage industry, and other interested parties were consulted. Industry representatives assisted in data gathering, arranging site visits, technical review, and sharing of industry-sponsored data collection activities. A data base comprised of all industry-supplied information was developed for evaluating HAP emissions and air emission controls for the final standards.

The standards for the oil and natural gas production and natural gas transmission and storage source categories were proposed in the **Federal Register** on February 6, 1998 (63 FR 6288). The preamble to the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested parties the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one was not held. The public comment period was from February 6, 1998 to April 7, 1998. Fifty comment letters were received. Commenters included industry representatives, trade associations, State agencies, and other interested parties.

On January 15, 1999, in response to comments received on the proposal, the EPA also published a supplemental notice announcing the availability of additional data collected from facilities in the natural gas transmission and storage source category (64 FR 2611). Four comment letters were received from industry representatives and trade associations.

All of the comments were carefully considered and changes were made to the proposed standards when determined by the EPA to be appropriate. A detailed discussion of these comments and responses can be found in a document entitled ''National Emissions Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage—Background Information for Final Standards: Summary of Public Comments and Responses'' (BID volume 2), which is

referenced in the **ADDRESSES** section of this preamble (EPA–453/R/99–004b, May 1999). The summary of comments and responses in the BID volume 2 serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Section V of this preamble discusses the major changes.

III. Summary of Promulgated Standards

A. Promulgated Standards for Oil and Natural Gas Production for Major Sources

This final action amends title 40, chapter I, part 63 of the Code of Federal Regulations by adding a new Subpart HH—National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities. The standards apply to owners and operators of facilities that process, upgrade, or store (1) hydrocarbon liquids (with the exception of those facilities that exclusively handle black oil) to the point of custody transfer and (2) natural gas from the well up to and including the natural gas processing plant. The standards limit HAP emissions from the following emission points at facilities that are major sources of HAP: (1) process vents on glycol dehydration units, (2) storage vessels with flash emissions, and (3) equipment leaks at natural gas processing plants.

As required by the Act, the determination of a facility's potential to emit HAP and, therefore, its status as a major source, is based on the total of all HAP emissions from all activities at a facility, except that section 112(n)(4) of the Act prohibits aggregating emissions from oil or gas exploration or production wells (and their associated equipment) and emissions from pipeline compressor or pump stations with emissions from other similar units. A definition of associated equipment is contained in the final standards.

To determine potential emissions for determining major source status, the final standards specify that an owner or operator that can document a decline in annual production each year for 5 years prior to the effective date of the rule must calculate the maximum facility throughput as the average of the annual throughput for the 3 years prior to the effective date of the rule, multiplied by 1.2. If any increase in production is observed over the 5 years prior to the effective date of the rule, the owner or operator must calculate the maximum facility throughput as the maximum annual throughput over the 5 years prior to the effective date times 1.2. The owner or operator must recalculate the maximum throughput if actual annual throughput increases to a rate above the calculated values. In addition, for other parameters used to estimate emissions, the owner or operator must use the maximum value measured over the period for which the maximum throughput is calculated and may be determined as an annual average or the highest single measured value.

1. Applicability

The final standards for oil and natural gas production facilities require that the owner or operator of a major source of HAP reduce HAP emissions from glycol dehydration units and storage vessels through the application of air emission control equipment or pollution prevention measures, or a combination of both. In addition, the owner or operator of a natural gas processing plant that is a major source of HAP is required to reduce HAP emissions from equipment leaks by establishing a leak detection and repair (LDAR) program.

The following are exempt from the requirements of subpart HH:

- Owners and operators of facilities that exclusively process, handle, and store black oil are not subject to the final standards. Black oil is defined in the final rule as a hydrocarbon liquid with an initial gas-to-oil ratio (GOR) less than 0.31 cubic meters per liter (m^3/liter) and an American Petroleum Institute (API) gravity less than 40 degrees. For this subpart, a facility that uses natural gas for fuel or generates gas from black oil still qualifies for this exemption.
- Oil and natural gas production facilities prior to the point of custody transfer that have a facilitywide actual annual average natural gas throughput less than 18.4 thousand cubic meters per day (m^3/day), and a facilitywide actual annual average hydrocarbon liquid throughput less than 39,700 liters per day (liter/day.) Oil and natural gas production facilities after the point of custody transfer, including natural gas processing plants, do not qualify for these exemptions.

2. Glycol Dehydration Unit Process Vent Standards

The MACT standard for process vents on new and existing glycol dehydration units was set at the floor level of control. To determine the MACT floor, the EPA divided glycol dehydration units into two sizes: (1) small glycol dehydration units with actual annual average natural gas throughputs less than 85 thousand m^3/day or with actual average benzene emissions less than 0.90 Mg/yr, and (2) large glycol dehydration units with actual annual average natural gas throughputs equal to or greater than 85 thousand m^3/day or with actual average benzene emissions equal to or greater than 0.90 Mg/yr. For small glycol dehydration units, the EPA determined that the MACT floor was no control and that it was not cost effective to select a regulatory alternative beyond the floor.

For large glycol dehydration units, the EPA reviewed the information that was available to develop a MACT floor (a detailed discussion of the development of the MACT floor can be found in the docket, Air Docket A–94–04). This information consisted of data gathered from: (1) industry responses to the EPA's Air Emission Survey Questionnaires, (2) site visits, (3) meetings with stakeholders, and (4) literature.

As required under section 112(d) of the Act, the EPA developed the MACT floor based on ''* * * the average limitation achieved by the best performing 12 percent of the existing sources * * *.'' The EPA obtained information on 200 glycol dehydration units that were considered to be major sources of HAP (prior to control). Of these, 34 percent (67 units) were controlled using a variety of control technologies, including: condensation, combustion, and a combination of condensation and combustion. The types of control technologies used by the industry have been demonstrated, in other applications, to achieve varying levels of emission reduction (ranging from 95.0 to 98 percent or better). The EPA could not identify a technical basis for the variation in the performance levels achieved by the controls reported to be used to control process vents on glycol dehydration units. In order to account for the variability in HAP emission reduction efficiencies, the EPA selected 95.0 percent as the required emission reduction (i.e., the MACT floor) for large glycol dehydration units in the oil and natural gas production source category.

The final standards require that all process vents on new and existing glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand m^3/day, on an annual average basis; or (2) the actual average benzene emissions from the glycol dehydration unit are less than 0.90 Mg/yr. Glycol dehydration units that meet these criteria are not subject to the control requirements of subpart HH.

Glycol dehydration units that are subject to the control requirements are required to connect, through a closed-vent system, each process vent on the glycol dehydration unit to an air

emission control system. The control system must reduce emissions: (1) by 95.0 percent or more of HAP, (2) to an outlet concentration of 20 parts per million by volume (ppmv) or less (for combustion devices), or (3) to a benzene emission level of 0.90 Mg/yr or less. Pollution prevention measures, such as process modifications or combinations of process modifications and one or more control devices that reduce the amount of HAP emissions generated, are allowed as an alternative provided they achieve the required emission reductions.

3. Storage Vessel Standards

Final standards are established for existing and new storage vessels with the potential for flash emissions that are located at major HAP sources. Storage vessels with the potential for flash emissions are defined as those that contain a hydrocarbon liquid with a storage tank GOR equal to or greater than 0.31 m^3/liter, an API gravity equal to or greater than 40 degrees, and an actual annual average throughput of hydrocarbon liquids equal to or greater than 79,500 liter/day.

Flash emissions from storage vessels occur when a hydrocarbon liquid with a high vapor pressure flows from a pressurized vessel into a vessel with a lower pressure. Flash emissions typically occur when a hydrocarbon liquid, such as condensate, is transferred from a production separator to a storage vessel. The final standards require that storage vessels with the potential for flash emissions be equipped with an air emission control system.

Under the final standards, a storage vessel with the potential for flash emissions is required to be equipped with a cover vented through a closed-vent system to a control device that (1) recovers or destroys HAP emissions with an efficiency of 95.0 percent or greater, or (2) for combustion devices, reduces HAP emissions to an outlet concentration of 20 ppmv or less.

A pressurized storage vessel that is designed to operate as a closed system is considered in compliance with the promulgated requirements for storage vessels. In addition, owners or operators that are meeting the requirements of 40 CFR part 60, subpart Kb; 40 CFR part 63, subpart G; or 40 CFR part 63, subpart CC, are also considered in compliance.

4. Standards for Equipment Leaks

The final rule requires owners and operators of natural gas processing plants that are major HAP sources to control HAP emissions from leaks from ancillary equipment and compressors that contain or contact a liquid or gas that has a total volatile hazardous air pollutant (VHAP) concentration equal to or greater than 10 percent by weight. The final equipment leak standards do not apply to ancillary equipment and compressors that operate in VHAP service less than 300 hours per year. Also, an owner or operator that is subject to and controlled under the provisions of 40 CFR part 60, subpart KKK; or 40 CFR part 61, subpart V; or 40 CFR part 63, subpart H, is only required to comply with the requirements of that subpart.

For equipment subject to these standards at either an existing or new source, the owner or operator is required to implement a LDAR program and where necessary, perform equipment modifications. Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located (1) at a nonfractionating facility that processes less than 283 thousand m^3/day, or (2) on the Alaskan North Slope, are exempt from some of the routine LDAR monitoring requirements. In addition, reciprocating compressors in wet gas service are exempt from the compressor requirements.

5. Air Emission Control Equipment Requirements

Specific performance and operating requirements are included for each control device installed by the owner or operator. Control devices are required to reduce the mass content of the gases vented to the device (1) by 95.0 percent or greater by weight as total organic compounds (TOC), less methane and ethane, or total HAP; or (2) for combustion devices, to an outlet HAP or TOC concentration of 20 ppmv or less.

Closed vent systems that contain bypass devices that could divert vent streams away from the control device must either install a flow indicator or secure the bypass valve in the nondiverting position to ensure that the control device is not bypassed.

Certain specifications for covers apply based on the type of cover and where the cover is installed. Requirements are specified for vapor leak-tight covers installed on storage vessels.

6. Test Methods and Procedures

An owner or operator must be able to demonstrate that the criteria for exemptions from control requirements are met when controls are not applied or when existing controls are adequate to meet the exemption criteria. For example, owners or operators of glycol dehydration units that do not install air emission controls because the actual average benzene emission rate from the unit is less than 0.90 Mg/yr must be able to demonstrate that the actual average benzene emission rate from the unit is less than 0.90 Mg/yr.

Procedures for demonstrating the HAP emission reduction efficiency of control devices and HAP concentration are consistent with procedures established in previously promulgated NESHAP that apply to emission sources similar to those addressed in the final standards. Engineering calculations, modeling (using EPA-approved models), and previous test results are generally acceptable means of demonstrating compliance, except where such means are not conclusive. Test procedures are specified in the final rule for use when testing is required to demonstrate compliance.

An alternative test procedure is provided to demonstrate control efficiency when a condenser is used for controlling emissions from a glycol dehydration unit reboiler vent. The inclusion of the alternative test procedure is appropriate in this standard because of difficulties associated with testing the inlet to a condenser in this application.

Procedures and test methods are also specified for the detection of leaks from ancillary equipment and compressors and leaks in covers and closed vent systems.

7. Monitoring and Inspection Requirements

The final standards require that the owner or operator periodically inspect and monitor air emission control equipment. Periodic inspections are required for certain types of covers to ensure gaskets and seals are in good condition and for closed-vent systems to ensure all fittings remain leak-tight. An owner or operator is required to periodically perform these inspections to determine and ensure that these equipment operate with no leaks.

For covers, the owner or operator is required to perform initial and semiannual visual inspections. For closed vent systems, the owner or operator is required to perform an initial leak inspection and annual visual inspections to detect leaks. In addition, the owner or operator of closed vent system components that are not permanently or semi-permanently sealed must perform annual leak inspections.

The final standards require continuous monitoring of control device operation through the use of automated instrumentation. Continuous monitoring systems measure and record control

device operating parameters to ensure compliance with the standards.

8. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements associated with the final standards are primarily those specified in the part 63 General Provisions (40 CFR 63, subpart A). Major sources are subject to all of the requirements of the General Provisions with the exception that (1) owners or operators are allowed up to 1 year from the effective date of the standards to submit the initial notification described in § 63.9(b) of subpart A; and (2) owners or operators are allowed to submit Periodic reports and startup, shutdown, and malfunction reports semiannually instead of quarterly. The EPA selected these specific exceptions due to the large number of facilities that need to submit notifications or reports related to the NESHAP. The EPA believes that these exceptions will not adversely affect the implementation of the final regulation or reduce its impact on HAP emissions.

B. Promulgated Standards for Natural Gas Transmission and Storage for Major Sources

The final standards amend title 40, chapter I, part 63 CFR by adding a new Subpart HHH—National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities. The standards apply to owners and operators of facilities that process, upgrade, transport or store natural gas prior to delivery to a local distribution company (LDC) or a final end user if no LDC is present. A compressor station that transports natural gas to a natural gas processing plant is considered a part of the oil and natural gas production source category.

A facility's potential to emit is required to be calculated based on a maximum facility throughput. For storage facilities or facilities that store and transport natural gas, the final rule specifies procedures for calculating this maximum throughput based on the facility's maximum withdrawal and injection rates and the working gas capacity of the storage field. Facilities that only transport natural gas are required to calculate maximum throughput as the highest annual throughput over 5 years prior to the effective date of the rule, multiplied by 1.2. The owner or operator must also establish maximum values of other parameters required to calculate emissions over the same period used to determine maximum throughput.

1. Applicability

The final standards for natural gas transmission and storage facilities require that the owner or operator of a major source of HAP reduce HAP emissions from glycol dehydration units through the application of air emission control equipment or pollution prevention measures, or a combination of both. The owner or operator of a facility that processes less than 28.3 thousand m^3/day of natural gas facilitywide on an actual annual average basis, where glycol dehydration units are the only HAP emission points, is exempt from the requirements of subpart HHH.

2. Glycol Dehydration Unit Process Vent Standards

The MACT standard for process vents on new and existing glycol dehydration units was set at the floor level of control. To determine the MACT floor, the EPA divided glycol dehydration units into two sizes: (1) small glycol dehydration units with actual annual average natural gas throughputs less than 283 thousand m^3/day or with actual average benzene emissions less than 0.90 Mg/yr, and (2) large glycol dehydration units with actual annual average natural gas throughputs equal to or greater than 283 thousand m^3/day or with actual average benzene emissions equal to or greater than 0.90 Mg/yr. As discussed in the January 15, 1999 supplemental notice (64 FR 2611), the EPA determined that the MACT floor for large glycol dehydration units was 95.0 percent control. For small glycol dehydration units, the EPA determined that the MACT floor was no control and that it was not cost effective to select a regulatory alternative beyond the floor.

The final standards require that all process vents on new and existing glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual annual average flowrate of natural gas to the glycol dehydration unit is less than 283 thousand m^3/day, or (2) the actual average benzene emissions from the glycol dehydration unit are less than 0.90 Mg/yr.

Glycol dehydration units that are subject to the control requirements are required to connect, through a closed-vent system, each process vent on the glycol dehydration unit to an air emission control system that reduces emissions: (1) by 95.0 percent or more of HAP, (2) to an outlet HAP concentration of 20 ppmv or less, for combustion devices, or (3) to a benzene emission level of 0.90 Mg/yr or less. As with the final standards for the oil and natural gas production NESHAP, pollution prevention measures, such as process modifications (or combinations of process modifications and control devices) that reduce the amount of HAP emissions generated, are allowed as an alternative provided they achieve the required emission reductions.

3. Air Emission Control Equipment Requirements

Specific performance and operating requirements are included for each control device installed by the owner or operator. Control devices are required to reduce the mass content of the gases vented to the device (1) by 95.0 percent or greater by weight as TOC, less methane and ethane, or total HAP; or (2) for combustion devices, to an outlet HAP or TOC concentration of 20 ppmv or less.

Closed vent systems that contain bypass devices that could divert vent streams away from the control device must either install a flow indicator or secure the bypass valve in the nondiverting position to ensure that the control device is not bypassed.

4. Test Methods and Procedures

An owner or operator must be able to demonstrate that the criteria for exemptions from control requirements are met when controls are not applied or when existing controls are adequate to meet the exemption criteria. For example, owners or operators of glycol dehydration units that do not install air emission controls because the actual average benzene emission rate from the unit is less than 0.90 Mg/yr must be able to demonstrate that the actual average benzene emission rate from the unit is less than 0.90 Mg/yr.

Procedures for demonstrating the HAP emission reduction efficiency of control devices and HAP concentration are consistent with procedures established in previously promulgated NESHAP that apply to emission sources similar to those addressed in the final standards. Engineering calculations, modeling (using EPA-approved models), and previous test results are generally acceptable means of demonstrating compliance, except where such means are not conclusive. Test procedures are specified in the final rule for use when testing is required to demonstrate compliance.

An alternative test procedure is provided to demonstrate control efficiency when a condenser is used for controlling emissions from a glycol dehydration unit reboiler vent. The inclusion of the alternative test procedure is appropriate in this standard because of difficulties

associated with testing the inlet to a condenser in this application. Procedures and test methods are also specified for detection of leaks in closed-vent systems.

5. Monitoring and Inspection Requirements

The monitoring and inspection requirements are (1) periodic control equipment monitoring, (2) initial leak detection inspections for closed-vent systems to ensure all fittings are leak-tight, (3) annual visual inspections of closed-vent systems (closed vent system components that are not permanently or semi-permanently sealed are also required to be annually inspected for leaks), and (4) continuous monitoring of control device operation. Continuous monitoring requires the use of automated instrumentation that measures and records control device compliance operating parameters.

C. Recordkeeping and Reporting Provisions

The recordkeeping and reporting requirements associated with the final standards are primarily those specified in the part 63 General Provisions (40 CFR 63, subpart A). Major sources are subject to all of the requirements of the General Provisions, except that (1) owners or operators are allowed up to 1 year from the effective date of the standards to submit the initial notification required under § 63.9(b) of subpart A and (2) owners or operators are allowed to submit Periodic reports and startup, shutdown, and malfunction reports semiannually instead of quarterly. These exceptions were selected to maintain consistency between the major source provisions of the final regulations for natural gas transmission and storage facilities and oil and natural gas production facilities.

IV. Summary of Impacts

A. HAP Emission Reductions

For major sources, the EPA estimated that the final oil and natural gas production standards for existing sources will result in a reduction of HAP emissions from 39,000 Mg/yr to 9,000 Mg/yr. In addition, HAP emissions would be reduced by 3,000 Mg/yr for new sources over the first 3 years after promulgation of these standards.

Table 1 presents the major source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates will occur from the implementation of the standards for oil and natural gas production.

TABLE 1.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS EXISTING AND NEW MAJOR SOURCES

Impact category	Existing oil and natural gas production	New oil and natural gas production	Existing natural gas transmission and storage *
Estimated number of impacted facilities	440	44	7
Emission reductions (Mg/yr):			
HAP	30,000	3,000	390
VOC	61,000	6,100	610
Methane	7,000	700	230
Secondary environmental emission increases (Mg/yr):			
Sulfur oxides	<1	<1	<1
Nitrogen oxides	<5	<1	<1
Carbon monoxide	<1	<1	<1
Energy (Kilowatt hours per year)	38,000	3,800	None
Implementation costs (Million of July 1993 $):			
Total installed capital	6.5	0.7	0.28
Total annual	4.0	0.4	0.3

* No new major sources are anticipated for this source category after the effective date for new sources and in the first 3 years following promulgation of the rule.

The EPA estimates that the final natural gas transmission and storage standards for existing sources will result in a reduction of HAP emissions from 2,100 Mg/yr to 1,710 Mg/yr. No new major sources are anticipated in the first 3 years after promulgation of this NESHAP. Table 1 also presents the major source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates will occur from the implementation of the standards for existing natural gas transmission and storage facilities.

The air emission reductions achieved by these standards, when combined with the air emission reductions achieved by other standards mandated by the Act, will accomplish the primary goal of the Act to:

* * * enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.

B. Secondary Environmental Impacts

Other environmental impacts are those associated with operation of certain air emission control devices. The EPA's secondary air emissions impact analyses for the oil and natural gas production source category consider a facility's ability to handle collected vapors. Some remotely located facilities may not be able to use collected vapor for fuel or recycle it back into the process. In addition, it may not be technically feasible for some facilities to safely utilize the non-condensable vapor streams from condenser systems as an alternative fuel source. An option for these facilities is to combust these vapors by flaring, rather than installing condensers.

These limitations are reflected in the analyses conducted by the EPA. In the analyses, the EPA estimated that (1) 45 percent of all impacted production facilities will be able to use collected vapors from installed control options as an alternative fuel source for an on-site combustion device such as a process heater or the glycol dehydration unit firebox, (2) 45 percent will be able to recycle collected vapors from installed control options into a low pressure header system for combination with other hydrocarbon streams handled at the facility, and (3) 10 percent will direct all collected vapor to an on-site flare. The secondary air impacts are associated with flare operations.

The adverse secondary air impacts would be minimal in comparison to the primary HAP reduction benefits from the implementation of the control options for major oil and natural gas sources. The estimated national annual increase in secondary air pollutant emissions that would result from the use of a flare to comply with the standards is estimated to be less than 1.0 Mg/yr for both sulfur oxide (SO_X) and carbon monoxide (CO) and less than 5 Mg/yr for nitrogen oxides (NO_X). These estimates are for major oil and natural gas production sources.

The anticipated increases in secondary air pollutant emissions are based on six affected facilities utilizing flares and are estimated to be less than 1.0 Mg/yr for SO_X, CO, and NO_X, each, from the implementation of the control options for major sources at natural gas transmission and storage facilities.

The adverse water impacts anticipated from the implementation of control options for the standards are expected to be minimal. The water impacts associated with the installation of a condenser system for the glycol dehydration unit reboiler vent would be minimal. This is because the condensed water collected with the hydrocarbon condensate can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with produced water for disposal by reinjection.

Similarly, the water impacts associated with installation of a vapor control system would be minimal. This is because the water vapor collected along with hydrocarbon vapors in the vapor collection and redirect system can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with the produced water for disposal by reinjection.

There are no adverse solid waste impacts anticipated from the implementation of the standards.

C. Energy Impacts

Energy impacts are those energy requirements associated with the operation of emission control devices. The EPA estimated that the operation of add-on control devices (e.g., condensers, flares, etc.) would not require additional energy. Vapor collection and redirect systems used for the control of emissions from a fixed-roof storage vessel require electricity for operation of the primary components of the system, including fans and blowers.

The EPA estimated that the annual energy requirements for each vapor collection/recovery system installed to comply with the oil and natural gas production storage vessel standards are estimated to be 300 kilowatt hours per year (kW-hr/yr). The EPA also estimated that approximately 125 oil and natural gas production major source facilities would install this control option. The national energy demand increase for existing sources was estimated to be 38,000 kW-hr/yr.

Because storage vessels are not regulated under the natural gas transmission and storage NESHAP, the EPA estimated that there would be no national energy demand increase from the operation of any of the control options analyzed under the natural gas transmission and storage standards for major sources.

The standards encourage the use of emission controls that recover hydrocarbon products, such as methane and condensate, that can be used on-site as fuel or reprocessed, within the production process, for sale. Thus, the standards have a positive impact associated with the recovery of non-renewable energy resources.

D. Cost Impacts

The estimated total capital cost to comply with the rule for existing major sources in the oil and natural gas production source category is approximately $6.5 million. The total capital cost for new major sources is estimated to be approximately $700,000.

The total estimated net annual cost to industry to comply with the requirements for existing major sources in the oil and natural gas production source category is approximately $4.0 million per year. The total net annual cost for new major sources is approximately $400,000 per year. These estimated annual costs include (1) the cost of capital; (2) operating and maintenance costs; (3) the cost of monitoring, recordkeeping, and reporting (MRR); and (4) any associated product recovery credits.

The estimated total capital cost to comply with the rule for major sources in the natural gas transmission and storage source category is approximately $280,000.

The total estimated net annual cost to industry to comply with the requirements for major sources in the natural gas transmission and storage source category is approximately $300,000. As with the oil and natural gas production total estimated annual cost to industry, this annual cost estimate includes (1) the cost of capital, (2) operating and maintenance costs, (3) the cost of MRR, and (4) any associated product recovery credits.

E. Economic Impacts

The EPA prepared an economic impact analysis that evaluates the impacts of the regulation on affected producers, consumers, and society. The economic analysis focuses on the regulatory effects on the U.S. natural gas market that is modeled as a national, perfectly competitive market for a homogenous commodity. The analysis does not include a model to assess the regulatory effects on the world crude oil market because the regulation is anticipated to affect less than 5 percent of the total U.S. crude oil production, and thus, it is unlikely to have any influence on the U.S. supply of crude oil or world crude oil prices.

The imposition of regulatory costs on the natural gas market result in negligible changes in natural gas prices, output, employment, foreign trade, and business profitability. Price and output changes as a result of the regulation are less than 0.0005 of 1 percent, which is significantly less than observed market trends. For example, between 1992 and 1993 the average change in wellhead price increased by 14 percent, while domestic production rose by 3 percent.

The total annual social cost of the regulation is $4.6 million, which accounts for the compliance cost imposed on producers, as well as market adjustments that influence the revenues to producers and consumption by end users, plus the associated deadweight loss to society of the reallocation of resources.

V. Significant Comments and Changes to the Proposed Standards

In response to comments received on the proposed standards, several changes have been made to the final rules. While several of these changes are clarifications designed to clarify the Agency's original intent, a number of them are significant changes to the proposed standard requirements. A summary of the substantive comments and/or changes made since proposal are described in the following sections. Detailed Agency responses to public comments and the revised analysis for the final rule are contained in the BID, volume 2 (EPA–453/R–99–004b, May 1999) and docket (see **ADDRESSES** section of this preamble).

A. Definition of Facility

The EPA developed the proposed definition of facility to (1) identify criteria that define a grouping of emission points that meet the intent of the language contained in section 112(a)(1) of the Act: ''* * * located within a contiguous area and under

common control, * * *''; and (2) contain terms that are meaningful and easily understood within the regulated industries. The proposed definition was based on individual surface sites and the idea that equipment located on different oil and gas properties (oil and gas lease, mineral fee tract, subsurface unit area, surface fee tract, or surface lease tract) shall not be aggregated. In addition, the proposed definition of a production field facility was limited to glycol dehydration units and storage vessels with the potential for flash emissions. The EPA requested comments on the proposed definition of facility. Specifically, the EPA requested comments on whether the proposed definition appropriately implements the intent of the major source definition in section 112(a)(1) for the oil and natural gas production and natural gas transmission and storage source categories or whether another definition would better implement this intent.

Several commenters responded to the EPA's request for comments on the definition of facility. The commenters requested clarification of, or suggested changes to, the proposed definition of facility. The commenters were primarily concerned that large groupings of equipment would inappropriately be considered a part of the same facility, resulting in a major source determination. In particular, the commenters were concerned about how subparts HH and HHH would treat units, contiguous surface sites, and surface sites with equipment under separate ownership. The commenters requested clarification of the definition of facility to prevent this confusion.

The EPA intended that the facility definition, as it applies to the oil and natural gas production source category, should lead to an aggregation of emissions in a major source determination that is reasonable, consistent with the intent of the Act, and easily implementable.

The EPA believes that it would not be reasonable to aggregate emissions from surface sites that are located on the same lease, but are great distances apart. The definition of facility states that equipment located on different oil and natural gas properties (e.g., leases) are not to be aggregated. Although units (which are made up of more than lease or tract) are under common control, under the definition of facility, the equipment located on different leases contained within each unit would not be aggregated.

Under section 112(a)(1) of the Act, a major source is defined as ''* * * any stationary source or group of stationary sources located within a contiguous area and under common control.* * *'' The EPA believes that by defining facility based on individual surface sites, the EPA has provided relief for individual surface sites that are located on the same lease, but are far apart, and excluding contiguous surface sites located on the same lease would be contrary to the intent of the Act.

Finally, the terms contained in the definition of facility (e.g., surface site and lease) are well understood within the industry and by enforcement agencies, and the EPA does not believe that additional definitions or clarifications regarding these terms are necessary.

In response to comments regarding specific clarification to the definition of facility, the EPA has made several changes to the definition of facility. The EPA modified the definition of facility to point to the definition of ''surface site.'' In subpart HHH, the EPA has added a definition of ''surface site,'' and modified the definition of facility to point to the new definition of ''surface site.''

The EPA further modified the definition of facility in subpart HH by: (1) specifying that ''upgraded'' means ''the removal of impurities or other constituents to meet contract specifications''; (2) changing the term ''unit areas'' to ''surface unit areas''; and (3) specifying that separate surface sites, whether or not connected by a road, waterway, power line or pipeline, would not be considered a part of the same facility.

Commenters recommended that the EPA expand its definition of production field facility in subpart HH to include additional HAP emission points beyond glycol dehydration units and storage vessels with flash emission potential. The concern was that several facilities that could otherwise be major sources of HAP would be exempt from subpart HH under the proposed definition of facility.

One of the EPA's objectives was to develop a definition of facility that would comply with section 112(n)(4) of the Act and at the same time, reduce the burden on owners and operators in making a major source determination. The EPA's evaluation of HAP emission sources in production field operations suggested that other potential HAP emission points at these facilities (e.g., equipment leaks) would be inconsequential to the determination of a facility's major source status. The EPA believes that eliminating the need to quantify HAP emissions from small sources at production field facilities would not affect the major source status determination, but would reduce the burden on owners or operators.

Other commenters requested that the EPA clarify, within the definition of facility in subpart HHH, whether the EPA intended to exclude facilities used to store natural gas after the gas enters the local distribution system of a gas utility. The commenter recommended that the EPA clarify that the definition of facility applies all the way to the end user only if there is no local distribution company.

The affected source in the natural gas transmission and storage source category should run all the way to the end user only if there is no local distribution company. Therefore, the EPA modified the definition of facility in subpart HHH to state that if there is not a local distribution company, the facility runs to the end user.

Some commenters were concerned that the definition of facility in subpart HH suggests that a natural gas storage facility could qualify as a production facility, since natural gas storage takes place in depleted gas wells, and liquids are transferred for processing to the plant.

Subpart HH contains a definition of field natural gas which means ''* * * natural gas that is extracted from a production well prior to entering the first stage of processing, such as dehydration.'' In addition, a production well is defined in § 63.761 as a ''* * * hole drilled in the earth from which * * * field natural gas is extracted.'' Since the gas handled by a natural gas storage facility has been dehydrated, the EPA believes that the natural gas handled by a storage facility would not be considered field natural gas. Therefore, given the definitions of production well and field natural gas, a natural gas storage field that uses a depleted gas well for storage would not qualify as a production facility. The EPA does not believe that clarification of the definition of facility is necessary in response to this comment.

B. Definition of ''Associated Equipment''

Section 112(n)(4)(A) of the Act states:

> * * * emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

According to the statutory definition of major source in section 112(a)(1) of the Act, HAP emissions from all emission points within a contiguous area and under common control must be counted in a major source determination. By stating that emissions from any oil and gas production and exploration well (with its associated equipment) cannot be aggregated for a major source determination, the provisions of section 112(n)(4)(A) mean HAP emissions from each well and each piece of equipment considered to be associated with the well must be evaluated separately in a major source determination. That is, any well or piece of associated equipment would only be determined to be a major source if HAP emissions from that well or piece of associated equipment were major.

Therefore, to implement this special provision of the Act for the oil and natural gas production source category, a definition of ''associated equipment'' was necessary. However, a definition for the term ''associated equipment'' was not provided in the statute. The EPA proposed that ''associated equipment'' be defined as all equipment associated with a production well up to the point of custody transfer, except that glycol dehydration units and storage vessels with the potential for flash emissions would not be associated equipment. In developing this proposed definition, the Agency identified and evaluated several options. The Agency also sought and received input from industry and other stakeholders.

In the proposal, the EPA specifically requested comments on the proposed definition of ''associated equipment.'' The EPA requested that commenters disagreeing with the proposal provide alternative definition options, along with supporting documentation, that would provide the relief that Congress intended for this industry in section 112(n)(4), while preserving the EPA's ability to regulate HAP emissions from glycol dehydration units and storage vessels with the potential for flash emissions.

Several commenters responded to the EPA's request for comments on the EPA's interpretation of the term ''associated equipment'' as used in section 112(n)(4) of the Act. Although several commenters did not fully support the EPA's interpretation of section 112(n)(4), they acknowledged that the proposed definition of associated equipment is a workable solution in comparison to other options for this definition. According to the commenters, aggregation of glycol dehydration units and storage vessels with flash emission potential would result in the same major source determination as aggregation of all potential sources, but would reduce the burden on the facility operator. Other commenters argued that section 112(n)(4) mandates no aggregation of emissions from individual sources at oil and gas production fields, and that the EPA exceeded its statutory authority by allowing for the aggregation of emissions from glycol dehydration units and storage vessels with the potential for flash emissions.

After consideration of these comments, the EPA agrees with those commenters who supported the proposed definition as a workable solution, and is promulgating the definition as proposed. The EPA disagrees with those commenters who argued that the Agency exceeded its statutory authority for the reasons discussed below.

Section 112(a)(1) generally requires HAP emission points within a contiguous area and under common control to be aggregated in a major source determination for the purposes of section 112. While this approach is appropriate for facilities in most industries, it may lead to unreasonable aggregations if strictly applied to oil and natural gas field operations. Given that some oil and natural gas operations (e.g., a production field) may cover several square miles or that leases and mineral rights agreements give some companies control over a large area of contiguous property, determination of major source status strictly by the language of section 112(a)(1) could mean in this industry that HAP emissions must be aggregated from emission points separated by large distances.

Congress addressed the unique aspects of the oil and natural gas production industry by providing the special provisions in section 112(n)(4) of the Act referring to the ''* * * oil and gas exploration and production well (and its associated equipment) * * *.'' However, Congress did not provide a definition of the term ''associated equipment'' in the statutory language, leaving its interpretation to the EPA. A definition of this term is important in determining the major source status of facilities in both the oil and natural gas production and the natural gas transmission and storage source categories.

In the absence of clear guidance in the statute, the EPA evaluated various options for defining ''associated equipment'' prior to proposal. The EPA's objective was to arrive at a reasonable interpretation that would (1) provide substantive meaning to the term ''associated equipment'' consistent with congressional intent; (2) prevent the aggregation of small, scattered HAP emission points in major source determinations; (3) be easily implementable; and (4) not preclude the aggregation of significant HAP emission points in the source category. Due to the lack of clarity in the statute and the potential impact on major source determinations, the Agency worked with industry stakeholders to identify and evaluate options prior to proposal. Industry representatives expressed their goals for the interpretation of associated equipment, and provided information on the magnitude of HAP emission points and the potential impacts of various options considered by the EPA.

The EPA considered, but rejected, a definition based on a narrow interpretation that would include only valves and fittings on a well as being associated equipment primarily because this option would not provide any additional relief to industry beyond what would have been provided had Congress only used the term ''well'' in section 112(n)(4) of the Act. The EPA also rejected a definition, initially recommended by industry, that was based on a broad interpretation that would include equipment far beyond the well as associated equipment.

In discussions with industry stakeholders over an extended period of time prior to proposal, the Agency sought to reach a workable solution on the definition of associated equipment, one that recognized the need to implement relief for this industry as Congress intended, and that also allowed for the appropriate regulation of significant emission points. In a technical evaluation, the EPA identified glycol dehydration units and storage tanks with flash emission potential as substantial contributors to HAP emissions, particularly relative to sources such as production wells. This conclusion was supported by industry. Under the proposed approach, associated equipment was defined as all equipment up to the point of custody transfer, excluding glycol dehydration units and storage vessels with the potential for flash emissions. This approach also included a definition of facility in the rule that effectively limited the distance over which all emission points (including glycol dehydration units and storage vessels with the potential for flash emissions) may be aggregated. Based on discussions with industry prior to proposal, as well as comments received supporting the proposed definition of associated equipment, the Agency believes that the proposed approach

best meets both industry and EPA goals for implementation of the language of section 112(n)(4).

Commenters who argued that the Agency exceeded its authority with the definition of associated equipment offered no substantive new information to support their claim. The EPA could not find support in the statute or in the legislative history that indicated that Congress intended to preclude aggregation of all emission points, including such significant ones as glycol dehydration units and storage tanks with flash emission potential through their inclusion as associated equipment. Rather, there are clear indications, in the EPA's judgement, that Congress' primary intent was to preclude the aggregation of small emitting sources over vast distances. The legislative history of the Act, for example, indicates that Congress believed that oil and natural gas production wells and their ''associated equipment'' generally have low HAP emissions, and are typically located in widely dispersed geographic areas, rather than being concentrated in a single area. The EPA used this background as a guide in developing an interpretation of ''associated equipment'' along with available data on HAP emissions from emission points within the oil and natural gas production source category. The EPA believes that glycol dehydration units and storage vessels with the potential for flash emissions are not the type of small HAP emission points that Congress intended to be included in the definition of associated equipment.

After the EPA's review and consideration of all comments received on the proposal, the definition of associated equipment promulgated in today's rule is the same as proposed.

C. Applicability

1. Black Oil Definition

In the proposed subpart HH, the EPA provided an exemption from the subpart for facilities that exclusively handle black oil. Black oil was defined in subpart HH as a hydrocarbon liquid with an API gravity less than 40 degrees and a GOR less than 0.31 m^3/liter of liquid.

Several commenters questioned the EPA's basis for the black oil definition. The commenters requested that the EPA revise the GOR and API gravity cutoffs. One commenter stated that it was unclear whether the definition of black oil, with the proposed cutoffs, was a determination related to human health risk.

During the development of the proposal, representatives of the oil and natural gas production industry stressed that their industry was composed of large numbers of facilities that handle black oil, and that black oil was not a significant contributor to overall source category HAP emissions. The EPA reviewed the available information and agreed with the industry representatives that facilities that exclusively handle black oil are not significant contributors to overall HAP emissions from the source category. Furthermore, the EPA did not identify control technologies, designed to reduce HAP, in use at existing facilities that exclusively process, handle, or store black oil. Therefore, the EPA determined that the MACT floor for black oil facilities was no control. This determination was not made based on the health risks associated with black oil.

The EPA developed the proposed definition of black oil based on a series of technical articles that describe five basic hydrocarbon fluids that typically exist in a reservoir: black oil, volatile oil, retrograde gas, wet gas, and dry gas (Air Docket A–94–04). Of these, black oil and volatile oil exist as liquid in the reservoir. Black oil, which is a mixture of chemical species ranging from methane to large, heavy, nonvolatile organic molecules, is in solution with dry gas, which is primarily methane. Volatile oil, which contains fewer heavy molecules, is in solution with retrograde gas, which has fewer of the heavy organic molecules.

According to these articles, reservoir fluid types are determined by rules-of-thumb based on an initial producing GOR, stock-tank liquid gravity, and stock tank liquid color. In particular, fluid type is usually determined by initial producing GOR and confirmed by stock tank gravity values and stock tank color. (Note: The distinction between initial producing GOR and producing GOR is important. As reservoir pressure reduces over time, the producing GOR for black oil increases. Therefore, if any other GOR is used, the facility may not appear to qualify for the exemption.) The rule-of-thumb for volatile oil is an initial producing GOR of 0.31 m^3/liter. Volatile oil is also suspected if the API gravity is equal to or greater than 40 degrees and a color that is brown, reddish, orange, or green. The rule-of-thumb for black oil is an initial producing GOR less than 0.31 m^3/liter, an API gravity of less than 45 degrees, and a color that is dark, usually black (sometimes with a greenish cast) or brown.

Since color determination is subjective, the EPA selected initial producing GOR and API gravity as quantifiable criteria for defining black oil. In addition, since there is a gap between the rule-of-thumb API gravity criteria for black oil and volatile oil, the EPA selected the lower, more conservative value of 40 degrees. The EPA believes that using a higher API gravity to define black oil, such as 45 or 50 degrees as recommended by the commenters, would increase the possibility that the liquid is a volatile oil, thus exempting sources that are likely to have higher HAP emissions. The EPA believes that the criteria for defining a black oil, which were obtained directly from widely recognized definitions of black oil and volatile oil used in the oil and natural gas industry, are technically sound for identifying which sources are included as black oil facilities. Therefore, the EPA has not modified the black oil definition.

2. Potential-to-Emit

Several commenters were concerned with the methods used to determine whether or not a facility was a major source. In particular, the EPA received several comment letters regarding the calculation of a facility's potential-to-emit (PTE) when determining a facility's major source status. The EPA received comments regarding the calculation of PTE on the following issues: (1) potential emissions calculated to determine major source status should consider controls and operational limitations whether or not they are federally enforceable as specified in the *National Mining Congress* v. *EPA* (59 F.3d.1351, D.C. Cir. 1995) court case; (2) potential emissions should not be based on equipment operating capacity because it would result in overregulation, but should consider the inherent operating limitations of the facility (e.g., declining production levels over time); (3) the EPA should provide a simplified approach to calculate PTE, which takes into account design and operational limitations; and (4) the EPA should use the logic in the PTE Transition policy where sources with low emissions may be considered nonmajor if records of actual emissions are maintained.

a. *Use of Limitations in Calculating PTE.* The EPA received comments requesting that potential emissions calculated to determine major source status should consider controls and operational limits whether or not they are federally enforceable.

The EPA believes that by referring to the definition of PTE in § 63.2 of subpart A, subparts HH and HHH contain the provisions for accounting for control

devices and federally enforceable operating limitations as requested by the commenters.

With respect to the *National Mining* court case, the court required the EPA to reconsider the Federal enforceability requirement, but did not vacate the requirement. As a result, the requirement for Federal enforceability is still in effect. The definition of PTE for the NESHAP program (40 CFR 63.2) is currently under review, and the EPA is engaged in a rulemaking process to amend the requirements in the General Provisions. The EPA has not modified subparts HH and HHH in response to these comments.

b. *Use of Inherent Design and Operational Limitations in Calculating PTE.* Several commenters were concerned that PTE estimates, as defined in the General Provisions, would be unrealistically high and would subject many small insignificant sources to the NESHAP requirements. The commenters requested that PTE be based on the inherent design and operational limitations of production and transmission and storage facilities, such as throughput rates.

According to commenters, the throughput of oil and natural gas production operations declines over time, and existing equipment is often designed, constructed and operated based on high initial production rates. Therefore, the commenters suggested that the facilities are usually operated at actual throughput rates that are much lower than the design capacities.

The EPA agrees that there are certain inherent throughput limitations associated with the production of oil and natural gas, primarily related to declining production rates. Therefore, the final subpart HH specifies a method for calculating maximum facility throughput to determine major source status and applicability to subpart HH. This method is based on a facility's past production rate and ability to document declining annual operations. However, it is the responsibility of the owner or operator to be aware of changes that could require a facility to recalculate its PTE and to do so in a timely manner. The owner or operator could be found in violation back until the point in time at which an engineering judgement would have shown that the facility was reasonably capable of emitting at major source thresholds. A detailed discussion is presented in section 2.1.1 of the BID volume 2.

The EPA also received comments that the EPA should consider the seasonal operation of natural gas storage facilities in estimating potential emissions, and that the facility's PTE cannot be based on withdrawal for the entire season at maximum capacity. The commenters explained that natural gas storage facilities must spend part of the year injecting gas, and that withdrawal rates decrease as the storage field's pressure drops.

The EPA agrees that natural gas storage facilities have inherent limitations due to the nature of their operations. Therefore, the final rule (subpart HHH) contains a method for calculating maximum facility throughput to determine major source status and applicability of subpart HHH. The method is based on the maximum withdrawal and injection rates and the working gas capacity for a given storage field. A more detailed discussion is presented in section 2.1.1 of BID volume 2.

c. *Simplified Approach to Calculate PTE.* Several commenters recommended a simplified approach to calculating PTE, such as screening equations similar to those developed for other NESHAP, to take into account design and operational limitations.

The EPA evaluated the use of an equation similar in structure to the Gasoline Distribution NESHAP, 40 CFR part 63, subpart R. After extended effort, the EPA found that the number of variables was too extensive to allow development of a manageable equation. The EPA also received supplemental comments from industry and trade associations indicating that their efforts in developing such an equation resulted in the same outcome (Air Docket A–94–04).

Therefore, as an alternative, the EPA developed a simplified major source determination (MSD) for HAP emission sources in the oil and natural gas production and natural gas transmission and storage source categories. The simplified MSD allows the owner or operator of a facility to easily determine (1) if they are major sources and whether NESHAP requirements apply to their facility, and (2) if they are required to obtain a title V operating permit.

Therefore, the final subpart HH states that facilities, prior to the point of custody transfer, that have a facilitywide actual annual average natural gas throughput less than 18.4 thousand m^3/day and a facilitywide actual annual average hydrocarbon liquid throughput less than 39,700 liter/day are exempt from subpart HH. A more detailed discussion on the development of this MSD is presented in section 2.1.1 of the BID volume 2.

Owners and operators of production facilities, after the point of custody transfer (including natural gas processing plants), must aggregate emissions from all HAP emissions units at the facility when determining whether or not the facility is a major source. Production facilities, after the point of custody transfer, are likely to have emission units in addition to glycol dehydration units and storage vessels, such as amine treaters and sulfur recovery units that are typically located at natural gas processing plants. Since these emissions units must be included in the total emissions for the facility, the EPA could not develop a cutoff that would reasonably ensure that sources operating below such a cutoff would not be major sources. Therefore, production facilities located after the point of custody transfer, including natural gas processing plants, do not qualify for the simplified major source determination.

Using the same procedure, the EPA developed an MSD for natural gas transmission and storage facilities where glycol dehydration units are the only HAP emission points. The final subpart HHH states that natural gas transmission and storage facilities operating with an actual annual average natural gas throughput below 28.3 thousand m^3/day are exempt from subpart HHH.

d. *Use of PTE Transition Policy.* Under the EPA's 1995 Potential to Emit Transition Policy, sources with low emissions (e.g., less than 50 percent of major source thresholds) may be deemed nonmajor if records of actual emissions are kept. Several commenters suggested the use of written documentation of physical and operational limitations that would be federally, State, or otherwise practically enforceable.

In the January 25, 1995 policy memorandum entitled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),'' the EPA issued a transition policy for section 112 and title V. The transition policy addressed concerns that some sources may face gaps in the ability to acquire federally enforceable PTE limits because of delays in State adoption or EPA approval of programs or in their implementation. In order to ensure that such gaps would not create adverse consequences for States or for sources, the EPA provided that, during a 2-year period extending from January 1995 through January 1997, sources lacking federally enforceable limitations, State and local air regulators had the option of treating the following types of sources as non-major under section 112 and in their title V programs: (1) sources that maintain adequate records to demonstrate that their actual emissions

are less than 50 percent of the applicable major source threshold and have continued to operate at less than 50 percent of the threshold since January 1994, and (2) sources with actual emissions between 50 and 100 percent of the major source threshold but which hold State-enforceable limits that are enforceable as a practical matter. On August 27, 1996, the transition policy was extended until July 31, 1998. On July 10, 1998, in a memorandum entitled ''Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy,'' the EPA announced a second extension of the transition policy. The extensions were provided because the EPA is engaged in a rulemaking process to consider amendments to the current PTE requirements. Currently, the PTE rulemaking, which will address the PTE requirements in the General Provisions (40 CFR part 63, subpart A) and the title V operating permits program, has not been completed. Those rule amendments will affect federal enforceability requirements for PTE limits under these programs. Thus, there will continue to be uncertainty with respect to federally enforceable limits. Therefore, in the July 10, 1998 memorandum, the EPA extended the transition policy until December 31, 1999, or until the effective date of the final rule in the PTE rulemaking, whichever is sooner.

The EPA expects that the rulemaking will be completed before December 31, 1999, and owners and operators will have the option of complying with the PTE rulemaking as well as the procedures specified in subparts HH and HHH.

D. Glycol Dehydration Unit Process Vent Standards

The proposed standards required a 95.0 percent control efficiency for all control devices, but did not specify over which averaging period the 95.0 percent should be determined. By not specifying an averaging period, the proposed rule required continuous compliance for all control devices. The EPA received several comment letters requesting that the EPA specify an averaging period. The commenters were particularly concerned that condensers could not achieve a 95.0 percent control efficiency on a continuous basis and that additional controls would be required to ensure compliance with the 95.0 percent requirement.

The commenters' primary point was that condensers are significantly affected by changes in ambient temperature. According to the commenters, when the ambient temperature is high, the condensers are less efficient. The commenters were concerned that during the warm summer months, condensers would not meet the control requirements. Therefore, the commenters specifically requested either a 30-day or a 12-month averaging period for compliance with the control requirements to balance changes in ambient temperature. In support of this request, the commenters maintained that using a longer averaging period would create no significant change in the emissions to the environment, but would substantially decrease the number of technical violations of the standard and reduce the administrative burden for the industry and the EPA.

The EPA reviewed the control efficiency and averaging period requirements in response to these comments. Based on the Agency's review of the possible options, today's rules require 95.0 percent control as a daily average. As an alternative for owners or operators that install condensers, the EPA has modified subpart HH to allow 95.0 percent condenser control as a 365-day rolling average, based on daily average condenser efficiency as a function of condenser outlet temperature (i.e., at the end of each operating day, the owner or operator calculates the daily average condenser outlet temperature, then calculates the 365-day average control efficiency for the preceding 365 days, including the current operating day).

Based on the information collected under the authority of section 114 of the Act, the comments received during the public comment period, and site visits, the EPA believes that an averaging period shorter than 365 days is appropriate for the natural gas transmission and storage source category. To the Agency's knowledge, glycol dehydration units located at storage facilities do not typically operate throughout the year. Therefore, the EPA was concerned that it would take more than 1 calendar year for a facility to obtain 365 days of data. Additionally, glycol dehydration units located at these sources do not typically operate during the warm summer months when condenser efficiency is lower. Although transmission facilities do operate for most of the year, the EPA believes that the HAP emission units in operation at these facilities are primarily compressors, and that most glycol dehydration units located at these facilities are used for withdrawing natural gas from storage (i.e., not likely to operate year-round). Therefore, for condensers installed on glycol dehydration units subject to control requirements under subpart HHH, the EPA has modified the requirements to specify that owners or operators that install condensers have the option of meeting a 95.0 percent control efficiency as a 30-day rolling average.

Several commenters requested that the EPA allow for combinations of controls and process modifications to achieve the required control efficiency. The commenters provided several suggestions for modifying the language in § 63.765(c)(2) stating that the owner or operator could reduce emissions from the glycol dehydration unit by 95.0 percent through process modifications or process modifications with controls. In addition, one of the suggestions was to include language allowing the owner or operator to complete a one-time compliance demonstration for the process modification.

The EPA agrees that owners or operators should be allowed to achieve a 95.0 percent emission reduction using process modifications or combinations of process modifications and one or more control devices. Therefore, today's rules contain requirements for demonstrating compliance with a 95.0 percent emission reduction using process modifications or a combination of process modifications and one or more control devices. In particular, the final rule requires the owner or operator to demonstrate how emissions have been reduced and to what level, and that the facility continues to be operated such that the 95.0 percent emission reduction is maintained.

The EPA does not believe that a one-time compliance demonstration would ensure future or continuous compliance, and the EPA believes that it is not appropriate. Therefore, the EPA has not included the commenter's suggested language allowing a one-time compliance demonstration for process modification. Instead, the final rules require the owner or operator to document facility operations and to provide this information in the Periodic reports.

E. Storage Vessel Standards

The criteria for an API gravity equal to or greater than 40 degrees or an initial producing GOR equal to or greater than 0.31 m3/liter were used in the proposed rule to define storage vessels with the potential for flash emissions. Prior to proposal, the EPA's analysis of storage vessels that contain hydrocarbon liquids that have an API gravity or an initial producing GOR higher than these criteria indicated the potential for significant flash emissions.

The EPA received comment letters objecting to the proposed cutoffs for storage vessels with the potential for flash emissions. In order to demonstrate their objection to the technical basis for these exemption criteria, the commenters provided emissions estimates for tanks containing hydrocarbon liquids with an API gravity less than 40 degrees and GOR of less than 0.31 m^3/liter. According to the emission estimates, these tanks, which do not meet the criteria for a storage vessel with the potential for flash emissions and would be exempt from the storage vessel control requirements, had significant HAP emissions. The EPA also received emission estimates for a tank containing a hydrocarbon liquid with an API gravity greater than 40 degrees and a GOR greater than 0.31 m^3/liter. According to the analysis provided by the commenter, this tank would be subject to the storage vessel control requirements but had no flash emissions.

The commenters did not provide alternative suggestions for defining storage vessels with the potential for flash emissions, other than recommending that ''the proposed storage tank exemption/control criteria be based on credible engineering methods supported by fundamental principles of fluid phase behavior.''

The EPA developed the definition for storage vessels with the potential for flash emissions based on criteria (i.e., API gravity and GOR) that were easily recognized by industry personnel and relatively easy to obtain. Furthermore, these criteria are based on hydrocarbon liquid characteristics.

According to section 112(d)(1), the Administrator is required to establish emission standards for each category of major sources. Section 112(d)(1) states that ''[T]he Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards * * *.'' Furthermore, section 112(d)(3) states that emission standards for existing sources in a category may be no less stringent than the MACT floor.

As stated in section V.C.1 of this preamble, the EPA has established that among the class of sources referred to as black oil facilities, the MACT floor is no control. For the class of sources defined as storage vessels with the potential for flash emissions (which includes storage vessels that do not process black oil), the EPA evaluated '' * * * the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) * * *'' (section 112(d)(3)(A) of the Act). The EPA determined that the top 12 percent of existing storage vessels with the potential for flash emissions were controlled.

The EPA recognizes that there could be specific situations, such as the ones analyzed by the commenters, where emissions of an exempted stream are higher than those of a non-exempted stream. In addition, there are many factors that affect whether flash emissions occur (e.g., pressure drop between two tanks, liquid vapor pressure, etc.). However, the EPA believes that this approach identifies hydrocarbon liquids that have a potential for significant flash emissions under conditions representative of industry operations.

In today's rule (final subpart HH), the EPA has added the throughput cutoff criterion to the storage vessels with the potential for flash emissions definition. The final rule states that a storage vessel with the potential for flash emissions is defined as a storage vessel that contains a hydrocarbon liquid with a stock tank GOR equal to or greater than 0.31 m3/liter and an API gravity equal to or greater than 40 degrees, and an actual annual average hydrocarbon liquid throughput equal to or greater than 79,500 liter/day. By adding the throughput criterion to the definition of storage vessels with the potential for flash emissions, rather than as a cutoff specified in proposed § 63.764(c)(2), storage vessels that do not meet the criteria for a storage vessel with the potential for flash emissions are not considered affected sources in the final rule and are not included in a facility's PTE calculation for determining major source status. The EPA believes that based on representative industry operations, the 40 degrees, 0.31 m^3/liter and the 79,500-liter/day exemption criteria are appropriate for defining storage vessels with the potential for flash emissions.

F. Standards for Natural Gas Transmission and Storage

The EPA received several comment letters expressing concern for the EPA's proposed standard for the natural gas transmission and storage source category. The commenters stated that the EPA did not have sufficient data to develop standards for the natural gas transmission and storage source category. The commenters requested that the EPA delay the natural gas transmission and storage portion of the proposed rulemaking to properly survey the industry for more meaningful data and assess whether a standard for the natural gas transmission and storage source category is necessary or achievable.

Several commenters explained that a review of the background information for proposed subpart HHH showed that the database consisted of information on the methods used in natural gas transmission from only two companies and no underground storage facilities. The commenters noted that the companies surveyed were predominately oil production facilities that handled gas as a by-product of oil production and that have higher HAP emissions because they handle more liquids with higher concentrations of HAP.

In response to these comments, the EPA collected additional data on glycol dehydration units in the natural gas transmission and storage source category through site visits and requests for information under the authority of section 114 of the Act.

Through these site visits and survey questionnaires, the EPA collected information from 83 facilities in the natural gas transmission and storage source category. The EPA considered this new information, along with the previously collected information on the natural gas transmission and storage source category, in developing a MACT floor for existing and new process vents on glycol dehydration units located at facilities in this source category. The EPA also used this information to better characterize processes and operations at natural gas transmission and storage facilities.

As stated in the January 15, 1999 supplemental notice (64 FR 2611), the additional data supported a MACT floor of 95.0 percent for existing and new natural gas transmission and storage facilities. In addition, the EPA announced that the Agency was considering raising the proposed throughput cutoff of 85 thousand m^3/day to 283 thousand m^3/day on an actual annual average basis. Glycol dehydration units operating below this cutoff would not be required to install controls under subpart HHH. The data did not warrant a change in the benzene emission cutoff of 0.90 Mg/yr.

The public comment period closed on February 16, 1999. The EPA received four comment letters in response to the EPA's request for comments and supporting information on the consideration of a 95.0 percent HAP emission reduction as the floor level of control, on the 283 thousand m^3/day natural gas throughput cutoff and the 0.90-Mg/yr benzene emission cutoff. The commenters agreed that exempting glycol dehydration units with actual annual average natural gas throughputs

less than 283 thousand $78m^3$/day and with actual average benzene emissions less than 0.90 Mg/yr from the control requirements under subpart HHH was appropriate.

However, the commenters indicated that they did not agree with a MACT floor of 95.0 percent for the transmission and storage source category. The commenters requested that the final rule should either exempt existing sources controlled by condensers, or require that existing sources controlled with condensers be controlled to a different level (i.e., 70 percent) than the combustion technology-based MACT floor. The commenters stated that condensers could consistently achieve a 75 percent emission reduction and that requiring an additional 20 percentage points of emission reduction in HAP would be inconsistent with the cost-to-benefit analysis in the February 6, 1998 proposal.

The EPA does not believe that it is necessary to provide exemptions or alternative levels of control for existing glycol dehydration units that are controlled by condensers. The EPA believes that this would not be consistent with the Act, which specifies in section 112(d)(3) that for a source category with 30 or more sources (such as the transmission and storage source category), the MACT floor for existing sources shall not be less stringent than ''* * * the average limitation achieved by the best performing 12 percent of the existing sources * * *.'' The data collected by the EPA indicated that the average limitation achieved by the top 12 percent of the existing glycol dehydration units located at natural gas transmission and storage facilities was 95.0 percent. Furthermore, the data indicated that the top 12 percent of the existing glycol dehydration units were controlled using combustion or a combination of combustion and condensation. Therefore, in accordance with the statute, the EPA established the MACT floor to be 95.0 percent for glycol dehydration units located at natural gas transmission and storage facilities, which corresponds to combustion.

However, the EPA agrees that the supplemental notice did not address the issue of averaging period for condensers in use at transmission and storage facilities. As stated in this preamble, the final rule allows an owner or operator that installs a condenser for control of HAP from glycol dehydration unit process vents to establish compliance with the 95.0 percent HAP emission reduction on a 30-day rolling average. In addition, the final rule allows the owner or operator to comply with one of the following: (1) 95.0 percent HAP emission reduction, (2) 20 ppmv outlet HAP concentration for combustion devices, or (3) outlet emissions of 0.90 Mg/yr of benzene. The EPA believes that the 0.90 Mg/yr benzene emission limit and the 30-day averaging period for condensers provides sufficient flexibility for owners and operators of existing controlled glycol dehydration units. A more detailed discussion regarding the EPA's responses to the comments received on the supplemental notice are presented in the BID volume 2.

G. Monitoring, Recordkeeping, and Reporting Requirements

The EPA received several comment letters claiming that the recordkeeping and reporting requirements of the proposed rule were extremely burdensome. The commenters requested that the EPA reduce the monitoring, recordkeeping, and reporting burden associated with the proposed rule. In particular, commenters were concerned that remote and unmanned facilities would be overburdened by the proposed monitoring, recordkeeping and reporting requirements. Commenters also requested that provisions be added to the rule to avoid duplicative reporting. Other commenters requested that flexibility to allow alternative monitoring, recordkeeping, and reporting be incorporated into the final rule.

The EPA recognizes that unnecessary monitoring, recordkeeping, and reporting requirements would burden both the source and enforcement agencies. Prior to proposal, the EPA attempted to reduce the amount of monitoring, recordkeeping, and reporting to only that which is necessary to demonstrate compliance.

Although the EPA has not removed the monitoring requirements for unmanned or remote facilities, the EPA did evaluate the possibility of reducing the requirements for unmanned facilities. The EPA concluded, however, that the monitoring requirements are the minimum necessary to ensure that control devices are operating to ensure compliance.

The EPA reevaluated whether monitoring, recordkeeping, and reporting requirements could be further reduced while maintaining the enforceability of the rule. Therefore, the EPA has made the following changes in the promulgated rule to further reduce the monitoring, recordkeeping, and reporting burden.

(1) Almost all reports have been consolidated into the Notification of Compliance Status report and the Periodic reports.

(2) If multiple tests are conducted for the same kind of emission point, using the same test method, only one complete test report is required to be submitted along with the summaries of the results of other tests.

(3) Site-specific test plans describing quality assurance in § 63.7(c) of 40 CFR part 63, subpart A, are not specifically required in the individual subparts because the test methods cited in subparts HH and HHH already contain applicable quality assurance protocols. It should be noted that the Administrator would still have the authority to request a test plan.

(4) Periodic reports are required to be submitted semiannually for all facilities (the proposal required quarterly reports if monitored parameters were out of range more than a specified percentage of time).

(5) A reduction in the record retention requirements for monitored parameters. The proposal required values of monitored parameters to be recorded every 15 minutes and all 15-minute records had to be retained. The final rule requires monitored parameters to be recorded every hour and all hourly records to be retained.

Several commenters were concerned with the provisions specifying the accuracy of the measurement devices used to comply with the subpart and requested that the EPA change or remove the accuracy requirements.

The EPA believes that accuracy requirements are necessary to demonstrate ongoing compliance. Furthermore, if the accuracy requirements were removed, additional recordkeeping and reporting requirements would be necessary to ensure that less accurate monitors were not installed after the performance tests. However, the EPA agrees with the commenters that the accuracy levels could be slightly less restrictive. Therefore, the EPA has changed the accuracy levels from ±1 percent of the temperature being monitored, in ^oC or ±0.5 ^oC, to ±2 percent of the temperature being monitored, in ^oC or ±2.5 ^oC, whichever is greater.

H. Cost and Economic Impacts

The EPA specifically requested comments on the cost impact and the production recovery credits as discussed in section IV of the preamble to the proposal (63 FR 6297), along with supporting documentation. The EPA received comment letters stating that the EPA had underestimated the costs of controls, had underestimated the cost of treating produced water, and had

overstated the quantity of product recovered that could be sold to offset the costs associated with subpart HH. Of specific concern was the closure of smaller facilities due to the rule.

The EPA based its cost estimates for control devices on published installed control system costs from the Ventura County (California) Air Pollution Control District (APCD) (Air Docket A–94–04). These costs were associated with a glycol dehydration unit regulation issued by the Ventura County APCD. According to this information, the cost of installing a condenser control system does not vary significantly based on the size (capacity) of a glycol dehydration system.

Approximately 20 billion barrels per year of produced water are generated by the oil and natural gas production source category (Air Docket A–94–04). Using an emission model developed by the Gas Research Institute (GRI–GLYCalc, version 3.0) to determine the amount of produced water generated by the number of facilities estimated to be affected by subpart HH, the EPA calculated that the oil and natural gas production NESHAP would result in an increase in produced water production of approximately 590,000 barrels per year. A GRI report (GRI Publication Number GRI–96/0049) indicated that produced water would be typically handled along with other produced water streams, either by underground injection control, surface impoundment, or other miscellaneous methods. Thus, the EPA believes that the final NESHAP would have a minimal impact on existing produced water disposal costs and that the estimated NESHAP control costs are, therefore, reasonable.

The EPA based its national cost estimate impacts on the estimated number of facilities that would be impacted by the regulatory provisions of subparts HH and HHH, along with detailed emission control cost estimates per HAP emission point (Air Docket A–94–04). In addition, the monitoring, recordkeeping, and reporting (MRR) costs were based on a detailed analysis of the regulatory requirements of subparts HH and HHH. The EPA currently believes that the MRR cost estimates accurately reflect the estimated effort required to address MRR requirements in the final NESHAP.

Further, the EPA expects that the 85 thousand m^3/day size cutoff will prevent the premature closure of a large number of small and often marginal well operations. Not accounting for this size cutoff would contribute to differences in the estimated reduction in natural gas production and employment losses associated with the standards.

As described in Section 4 of the economic impact analysis report, the EPA's economic model determines production and closure decisions on the basis of a producing field (i.e., a group of similar wells) that is consistent with commenters concerns that ''production decisions are made on a well-by-well or project basis and if an individual project's profits fall below its break-even point, that the well will be abandoned.'' The EPA did not estimate losses of economically producible natural gas reserves. The economic analysis conducted by the EPA is unable to address possible impacts on production from future natural gas reserves. However, based on the negligible impact on current natural gas production associated with the EPA's engineering estimate of compliance cost, it is not expected that these impacts would be as great as indicated by the commenter.

VI. Administrative Requirements

A. Docket

The docket for these rulemakings is A–94–04. The docket is an organized and complete file of all the information considered by the EPA in the development of these rulemakings. The principal purposes of the docket are (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A) of the Act]. This docket contains copies of the regulatory texts, BID volumes 1 and 2, references not readily available to the public, and technical memoranda documenting the information considered by the EPA in the development of the rules. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Paperwork Reduction Act

The information collection requirements in these rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information collection request (ICR) documents have been prepared by the EPA (ICR Nos. 1788.02 and 1789.02) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

Information is required to ensure compliance with the provisions of the final rules. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the final rules. In addition, the EPA's authority to take administrative action would be reduced significantly.

The final rules require that facility owners or operators retain records for a period of 5 years, which exceeds the 3 year retention period contained in the guidelines in 5 CFR 1320.6. The 5 year retention period is consistent with the provisions of the General Provisions of 40 CFR part 63, and with the 5 year records retention requirement in the operating permit program under title V of the Act.

All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information. See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979. Even where the EPA has determined that data received in response to an ICR are eligible for confidential treatment under 40 CFR part 2, subpart B, the EPA may nonetheless disclose the information if it is ''relevant in any proceeding'' under the statute (42 U.S.C. 7414(C); 40 CFR 2.301(g)). The information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Information to be reported consists of emission data and other information that are not of a sensitive nature. No sensitive personal or proprietary data are being collected.

The estimated annual average hour burden for the final oil and natural gas production NESHAP is 56 hours per respondent. The estimated annual average cost of this burden is $2,400 for each of the estimated 484 existing and new (projected) respondents.

The estimated annual average hour burden for the final natural gas transmission and storage NESHAP is 30 hours per respondent. The estimated annual average cost of this burden is $1,300 for each of the estimated 7 existing respondents.

Reports are required on a semiannual basis and as required, as in the case of startup, shutdown, and malfunction plans. 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; to 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; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The 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 these final rules.

C. Executive Order 12866: A Significant Regulatory Action Determination

Under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 5173 (October 4, 1993)), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows: (1) is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) is likely to materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof; or (4) is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to Executive Order 12866, OMB has reviewed these rules. Changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These final rules will not have a significant economic impact on a substantial number of small entities. According to *Wards Business Directory* (1993), there are 1,152 firms in the seven affected Standard Industrial Classification (SIC) codes and 735 of these firms meet the Small Business Administration (SBA) definition of a small entity.

The number of affected small entities for these rules is likely to be minimal due to several considerations in these rules that minimize the burden on all firms, both small and large. These considerations include exempting from the control requirements of the oil and natural gas production NESHAP those glycol dehydration units located at major sources with (1) an actual flowrate of natural gas to the glycol dehydration unit less than 85 thousand m^3/day, on an annual average basis, or (2) benzene emissions less than 0.90 Mg/yr. Also, these considerations include exempting from the control requirements of the natural gas transmission and storage NESHAP those glycol dehydration units located at major sources with (1) an actual flowrate of natural gas to the glycol dehydration unit less than 283 thousand m^3/day, on an annual average basis; or (2) benzene emissions less than 0.90 Mg/yr.

In a screening of potential impacts on a sample of small entities, the EPA found that there are minimal impacts on these entities. The weighted average of control costs as a percent of sales is 0.09 of 1 percent for the small firms in the sample, while a maximum value of 1.1 percent results for only two of these firms. The analysis also indicates that with the regulations, the change in measures of profitability are minimal (i.e., 0.11 of 1 percent change in the cost-to-sales ratio for small firms), and there are no indications of financial failures or employment losses for both small and large firms. The screening analysis for these rules is detailed in the Economic Impact Analysis (see Docket No. A–94–04).

E. 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. The 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 17, 1999.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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 the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rules do not include a Federal mandate that may result in expenditures of $100 million of more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to today's final rules.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the 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 the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the 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 rules do not create a mandate on the State, local or tribal governments. These rules do not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to these rules. The EPA, nevertheless, involved State and local governments in their development of the final rules.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) the EPA determines is economically significant as defined under Executive Order 12866, (2) concerns an environmental health or safety risks, and (3) the EPA has any reason to believe may disproportionately affect children. If the regulatory action meets these criteria, the EPA 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 EPA.

The EPA interprets Executive Order 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. These rules are not subject to Executive Order 13045 for two reasons: (1) the rule is based solely on technology performance; and (2) no alternative technologies have been identified that would provide greater stringency at a reasonable cost, therefore, an assessment of impacts on children would have no impact on the stringency decision.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the 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 the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the 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 the 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 rules do not significantly or uniquely affect the communities of Indian tribal governments. The final rules do not create mandates upon tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards in regulatory and procurement activities unless doing so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical and test methods required by this final rule.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary consensus standards. The search identified 16 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, the EPA determined that eight of the candidate consensus standards identified for measuring HAP or surrogate pollutant emissions subject to the emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Seven of the remaining candidate consensus standards are new standards under development that the EPA plans to follow, review, and consider adopting at a later date.

One consensus standard, ASTM Z7420Z, is potentially practical for EPA use in lieu of EPA Method 18 (See 40 CFR part 60, appendix A). At the time of the EPA's search, the ASTM standard was still under development and the EPA had provided comments on the method. The EPA also compared a draft of this ASTM standard to methods previously reviewed as alternatives to EPA Method 18 that were approved with specific applicability limitations. These methods are designated as ALT–017 and CTM–028 and available through EPA's Emission Measurement Center Internet site at www.epa.gov/ttn/emc/tmethods.html. The proposed ASTM Z7420Z standard is very similar to these approved alternative methods. When finalized and adopted by ASTM, the standard may be equally suitable for the same applications as the approved

alternatives. However, this rule does not adopt the ASTM standard since it is not practical to do so until the potential candidate is final and the EPA has review the final standard. The EPA plans to continue to follow the progress of the standard and will consider adopting the ASTM standard at a later date.

Similarly, the Gas Research Institute has developed a sampling method for glycol dehydration units, the ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1). The development of this procedure included a field evaluation program and technical review by the EPA. A report documenting this procedure has been available to the public from the GRI since 1996. This procedure provides a simpler, cheaper, and technically appropriate means of determining HAP emissions from glycol dehydration unit process vents when direct measurement is necessary. Consistent with the Agency's commitment to reduce costs to the private sector where technically feasible and in accordance with Clean Air Act requirements, the EPA has included the ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' as an alternative control device performance test procedure.

This rule requires standard EPA methods known to the industry and States. Approved alternative methods also may be used with prior EPA approval.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Black oil, Associated equipment, Storage vessels with the potential for flash emissions, Glycol dehydration units, Oil and natural gas production, Natural gas transmission and storage, Equipment leaks, Natural gas processing plant, Reporting and recordkeeping requirements.

Dated: May 14, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399.

2. Part 63 is amended by adding subpart HH to read as follows:

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

Sec.

63.760 Applicability and designation of affected source.
63.761 Definitions.
63.762 Startups, shutdowns, and malfunctions.
63.763 [Reserved]
63.764 General standards.
63.765 Glycol dehydration unit process vent standards.
63.766 Storage vessel standards.
63.767 [Reserved]
63.768 [Reserved]
63.769 Equipment leak standards.
63.770 [Reserved]
63.771 Control equipment requirements.
63.772 Test methods, compliance procedures, and compliance determinations.
63.773 Inspection and monitoring requirements.
63.774 Recordkeeping requirements.
63.775 Reporting requirements.
63.776 Delegation of authority.
63.777 Alternative means of emission limitation.
63.778 [Reserved]
63.779 [Reserved]
Appendix to Subpart HH—Tables

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

§ 63.760 Applicability and designation of affected source.

(a) This subpart applies to the owners and operators of the emission points, specified in paragraph (b) of this section that are located at oil and natural gas production facilities that meet the specified criteria in paragraphs (a)(1) and either (a)(2) or (a)(3) of this section.

(1) Major sources of hazardous air pollutants (HAP) as determined using the maximum natural gas or hydrocarbon liquid throughput, as appropriate, calculated in paragraphs (a)(1)(i) through (a)(1)(iii) of this section. A facility that is determined to be an area source based on emission estimates using the maximum natural gas or hydrocarbon throughput calculated as specified in paragraphs (a)(1)(i) through (iii) of this section, but subsequently increases emissions or potential to emit above the major source levels (without first obtaining and complying with other limitations that keep its potential to emit HAP below major source levels), becomes a major source and must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (f) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(i) If the owner or operator documents, to the Administrator's satisfaction, a decline in annual natural gas or hydrocarbon liquid throughput, as appropriate, each year for the 5 years prior to June 17, 1999, the owner or operator shall calculate the maximum natural gas or hydrocarbon liquid throughput used to determine maximum potential emissions according to the requirements specified in paragraph (a)(1)(i)(A) of this section. In all other circumstances, the owner or operator shall calculate the maximum throughput used to determine whether a facility is a major source in accordance with the requirements specified in paragraph (a)(1)(i)(B) of this section.

(A) The maximum natural gas or hydrocarbon liquid throughput is the average of the annual natural gas or hydrocarbon liquid throughput for the 3 years prior to June 17, 1999, multiplied by a factor of 1.2.

(B) The maximum natural gas or hydrocarbon liquid throughput is the highest annual natural gas or hydrocarbon liquid throughput over the 5 years prior to June 17, 1999, multiplied by a factor of 1.2.

(ii) The owner or operator shall maintain records of the annual facility natural gas or hydrocarbon liquid throughput each year and upon request submit such records to the Administrator. If the facility annual natural gas or hydrocarbon liquid throughput increases above the maximum natural gas or hydrocarbon liquid throughput calculated in paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section, the maximum natural gas or hydrocarbon liquid throughput must be recalculated using the higher throughput multiplied by a factor of 1.2.

(iii) The owner or operator shall determine the maximum values for other parameters used to calculate emissions as the maximum for the period over which the maximum natural gas or hydrocarbon liquid throughput is determined in accordance with paragraph (a)(1)(i)(A) or (B) of this section. Parameters shall be based on either highest measured values or annual average.

(2) Facilities that process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer.

(3) Facilities that process, upgrade, or store natural gas prior to the point at which natural gas enters the natural gas

transmission and storage source category or is delivered to a final end user. For the purposes of this subpart, natural gas enters the natural gas transmission and storage source category after the natural gas processing plant, when present. If no natural gas processing plant is present, natural gas enters the natural gas transmission and storage source category after the point of custody transfer.

(b) The affected sources to which the provisions of this subpart apply shall comprise each emission point located at a facility that meets the criteria specified in paragraph (a) of this section and listed in paragraphs (b)(1) through (4) of this section.

(1) Each glycol dehydration unit;

(2) Each storage vessel with the potential for flash emissions;

(3) The group of all ancillary equipment, except compressors, intended to operate in volatile hazardous air pollutant service (as defined in § 63.761), which are located at natural gas processing plants; and

(4) Compressors intended to operate in volatile hazardous air pollutant service (as defined in § 63.761), which are located at natural gas processing plants.

(c) [Reserved]

(d) The owner and operator of a facility that does not contain an affected source as specified in paragraph (b) of this section are not subject to the requirements of this subpart.

(e) *Exemptions.* The facilities listed in paragraphs (e)(1) and (e)(2) of this section are exempt from the requirements of this subpart. Records shall be maintained as required in § 63.10(b)(3).

(1) A facility that exclusively processes, stores, or transfers black oil (as defined in § 63.761) is not subject to the requirements of this subpart. For the purposes of this subpart, a black oil facility that uses natural gas for fuel or generates gas from black oil shall qualify for this exemption.

(2) A facility, prior to the point of custody transfer, with a facilitywide actual annual average natural gas throughput less than 18.4 thousand standard cubic meters per day and a facilitywide actual annual average hydrocarbon liquid throughput less than 39,700 liters per day.

(f) The owner or operator of an affected source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The owner or operator of an affected source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with provisions of this subpart no later than June 17, 2002 except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) The owner or operator of an affected source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(g) The following provides owners or operators of an affected source with information on overlap of this subpart with other regulations for equipment leaks. The owner or operator shall document that they are complying with other regulations by keeping the records specified in § 63.774(b)(9).

(1) After the compliance dates specified in paragraph (f) of this section, ancillary equipment and compressors that are subject to this subpart and that are also subject to and controlled under the provisions of 40 CFR part 60, subpart KKK, are only required to comply with the requirements of 40 CFR part 60, subpart KKK.

(2) After the compliance dates specified in paragraph (f) of this section, ancillary equipment and compressors that are subject to this subpart and are also subject to and controlled under the provisions of 40 CFR part 61, subpart V, are only required to comply with the requirements of 40 CFR part 61, subpart V.

(3) After the compliance dates specified in paragraph (f) of this section, ancillary equipment and compressors that are subject to this subpart and are also subject to and controlled under the provisions of 40 CFR part 63, subpart H, are only required to comply with the requirements of 40 CFR part 63, subpart H.

(h) An owner or operator of an affected source that is a major source or is located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 or part 71 operating permit requirements.

§ 63.761 Definitions.

All terms used in this subpart shall have the meaning given them in the Clean Air Act (Act), subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Alaskan North Slope means the approximately 180,000 square kilometer area (69,000 square mile area) extending from the Brooks Range to the Arctic Ocean.

Ancillary equipment means any of the following pieces of equipment: pumps, pressure relief devices, sampling connection systems, open-ended valves, or lines, valves, flanges, or other connectors.

API gravity means the weight per unit volume of hydrocarbon liquids as measured by a system recommended by the American Petroleum Institute (API) and is expressed in degrees.

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels with the potential for flash emissions.

Black oil means hydrocarbon (petroleum) liquid with an initial producing gas-to-oil ratio (GOR) less than 0.31 cubic meters per liter and an API gravity less than 40 degrees.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering and exporting thermal energy in the form of steam or hot water. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and if necessary, flow inducing devices that transport gas or vapor from an emission point to one or more control devices. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the conveyance system shall not be considered a closed-vent system and is not subject to closed-vent system standards.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic HAP emissions.

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and

remains liquid at standard conditions, as specified in § 63.2.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every hour or records hourly or more frequent block average values.

Control device means any equipment used for recovering or oxidizing HAP or volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused (i.e., injected into the flame zone of a combustion device), returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be control devices or closed-vent systems.

Cover means a device which is placed on top of or over a material such that the entire surface area of the material is enclosed and sealed. A cover may have openings (such as access hatches, sampling ports, and gauge wells) if those openings are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed, provided that each opening is closed and sealed when the opening is not in use. In addition, a cover may have one or more safety devices. Examples of a cover include, but are not limited to, a fixed-roof installed on a tank, an external floating roof installed on a tank, and a lid installed on a drum or other container.

Custody transfer means the transfer of hydrocarbon liquids or natural gas: after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation. For the purposes of this subpart, the point at which such liquids or natural gas enters a natural gas processing plant is a point of custody transfer.

Equipment leaks means emissions of HAP from ancillary equipment (as defined in this section) and compressors.

Facility means any grouping of equipment where hydrocarbon liquids are processed, upgraded (i.e., remove impurities or other constituents to meet contract specifications), or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission and storage source category. For the purpose of a major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in this section. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface or surface unit areas, surface fee tracts, surface lease tracts, or separate surface sites, whether or not connected by a road, waterway, power line or pipeline, shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, a compressor station that transports natural gas to a natural gas processing plant, and natural gas processing plants.

Field natural gas means natural gas extracted from a production well prior to entering the first stage of processing, such as dehydration.

Fixed-roof means a cover that is mounted on a storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Flame zone means the portion of the combustion chamber in a combustion device occupied by the flame envelope.

Flash tank. See the definition for gas-condensate-glycol (GCG) separator.

Flow indicator means a device which indicates whether gas flow is present in a line or whether the valve position would allow gas flow to be present in a line.

Gas-condensate-glycol (GCG) separator means a two- or three-phase separator through which the ''rich'' glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Gas-to-oil ratio (GOR) means the number of standard cubic meters of gas produced per liter of crude oil or other hydrocarbon liquid.

Glycol dehydration unit means a device in which a liquid glycol (including, but not limited to, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes ''rich'' glycol. This glycol is then regenerated in the glycol dehydration unit reboiler. The ''lean'' glycol is then recycled.

Glycol dehydration unit baseline operations means operations representative of the glycol dehydration unit operations as of June 17, 1999. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (i.e., at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent and the vent from the GCG separator (flash tank), if present.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere or to a control device.

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Clean Air Act. All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining compliance.

Hydrocarbon liquid means any naturally occurring, unrefined petroleum liquid.

In VHAP service means that a piece of ancillary equipment or compressor either contains or contacts a fluid (liquid or gas) which has a total volatile HAP (VHAP) concentration equal to or greater than 10 percent by weight as determined according to the provisions of § 63.772(a).

In wet gas service means that a piece of equipment contains or contacts the field gas before the extraction of natural gas liquids.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Initial producing GOR means the producing standard cubic meters of gas per liter at the time that the reservoir pressure is above the bubble point pressure (or dewpoint pressure for a gas).

Initial startup means the first time a new or reconstructed source begins production. For the purposes of this subpart, initial startup does not include subsequent startups (as defined in this section) of equipment, for example, following malfunctions or shutdowns.

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that: (1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control; (2) Emissions from processes, operations, or equipment that are not part of the same facility, as defined in this section, shall not be aggregated; and (3) For facilities that are production field facilities, only HAP emissions from glycol dehydration units and storage tanks with flash emission potential shall be aggregated for a major source determination.

Natural gas means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface. The principal hydrocarbon constituent is methane.

Natural gas liquids (NGL) means the liquid hydrocarbons, such as ethane, propane, butane, pentane, natural gasoline, and condensate that are extracted from field natural gas.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, or the fractionation of mixed NGL to natural gas products, or a combination of both.

No detectable emissions means no escape of HAP from a device or system to the atmosphere as determined by:

(1) Instrument monitoring results in accordance with the requirements of § 63.772(c); and

(2) The absence of visible openings or defects in the device or system, such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, indicates that an owner or operator has complied with an applicable operating parameter limitation, over the appropriate averaging period as specified in § 63.772(f) or (g).

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means an instrument used to indicate the concentration level of organic compounds exiting a control device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50 percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed device using a controlled flame, the primary purpose of which is to transfer heat to a process fluid or process material that is not a fluid, or to a heat transfer material for use in a process (rather than for steam generation).

Produced water means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

Production field facilities means those facilities located prior to the point of custody transfer.

Production well means any hole drilled in the earth from which crude oil, condensate, or field natural gas is extracted.

Reciprocating compressor means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the drive shaft.

Relief device means a device used only to release an unplanned, non-routine discharge in order to avoid safety hazards or equipment damage. A relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Safety device means a device that meets both of the following conditions: it is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and it remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a glycol dehydration unit, or other affected source under this subpart, or equipment required or used solely to comply with this subpart.

Startup means the setting into operation of a glycol dehydration unit, or other affected equipment under this subpart, or equipment required or used to comply with this subpart. Startup includes initial startup and operation solely for the purpose of testing equipment.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Storage vessel with the potential for flash emissions means any storage vessel that contains a hydrocarbon liquid with a stock tank GOR equal to or greater than 0.31 cubic meters per liter and an API gravity equal to or greater than 40 degrees and an actual annual average hydrocarbon liquid throughput equal to or greater than 79,500 liters per day. Flash emissions occur when dissolved hydrocarbons in the fluid evolve from solution when the fluid pressure is reduced.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Tank battery means a collection of equipment used to separate, treat, store, and transfer crude oil, condensate, natural gas, and produced water. A tank battery typically receives crude oil, condensate, natural gas, or some combination of these extracted products from several production wells for accumulation and separation prior to transmission to a natural gas plant or petroleum refinery. A tank battery may or may not include a glycol dehydration unit.

Temperature monitoring device means an instrument used to monitor temperature and having a minimum accuracy of ±2 percent of the temperature being monitored expressed in °C, or ±2.5 °C, whichever is greater. The temperature monitoring device may

measure temperature in degrees Fahrenheit or degrees Celsius, or both.

Total organic compounds or *TOC*, as used in this subpart, means those compounds which can be measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Volatile hazardous air pollutant concentration or *VHAP concentration* means the fraction by weight of all HAP contained in a material as determined in accordance with procedures specified in § 63.772(a).

§ 63.762 Startups, shutdowns, and malfunctions.

(a) The provisions set forth in this subpart shall apply at all times except during startups or shutdowns, during malfunctions, and during periods of non-operation of the affected sources (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. However, during the startup, shutdown, malfunction, or period of non-operation of one portion of an affected source, all emission points which can comply with the specific provisions to which they are subject must do so during the startup, shutdown, malfunction, or period of non-operation.

(b) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart during times when emissions are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning, or if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous startup, shutdown, or malfunction of the affected source or a portion thereof.

(c) During startups, shutdowns, and malfunctions when the requirements of this subpart do not apply pursuant to paragraphs (a) and (b) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the maximum extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction, and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

(d) The owner or operator shall prepare a startup, shutdown, or malfunction plan as required in § 63.6(e)(3) except that the plan is not required to be incorporated by reference into the source's title V permit as specified in § 63.6(e)(3)(i). Instead, the owner or operator shall keep the plan on record as required by § 63.6(e)(3)(v). The failure of the plan to adequately minimize emissions during startup, shutdown, or malfunctions does not shield an owner or operator from enforcement actions.

§ 63.763 [Reserved].

§ 63.764 General standards.

(a) Table 1 of this subpart specifies the provisions of subpart A (General Provisions) that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(b) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. Reports may be submitted on electronic media.

(c) Except as specified in paragraph (e) of this section, the owner or operator of an affected source located at an existing or new major source of HAP emissions shall comply with the standards in this subpart as specified in paragraphs (c)(1) through (3) of this section.

(1) For each glycol dehydration unit process vent subject to this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) The owner or operator shall comply with the control requirements for glycol dehydration unit process vents specified in § 63.765;

(ii) The owner or operator shall comply with the monitoring requirements specified in § 63.773; and

(iii) The owner or operator shall comply with the recordkeeping and reporting requirements specified in §§ 63.774 and 63.775.

(2) For each storage vessel with the potential for flash emissions subject to this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(2)(i) through (iii) of this section.

(i) The control requirements for storage vessels specified in § 63.766;

(ii) The monitoring requirements specified in § 63.773; and

(iii) The recordkeeping and reporting requirements specified in §§ 63.774 and 63.775.

(3) For ancillary equipment (as defined in § 63.761) and compressors at a natural gas processing plant subject to this subpart, the owner or operator shall comply with the requirements for equipment leaks specified in § 63.769.

(d) [Reserved]

(e) *Exemptions.* (1) The owner or operator is exempt from the requirements of paragraph (c)(1) of this section if the criteria listed in paragraph (e)(1)(i) or (e)(1)(ii) are met. Records of the determination of these criteria must be maintained as required in § 63.774(d)(1) of this subpart.

(i) The actual annual average flowrate of natural gas to the glycol dehydration unit is less than 85 thousand standard cubic meters per day, as determined by the procedures specified in § 63.772(b)(1) of this subpart; or

(ii) The actual average emissions of benzene from the glycol dehydration unit process vent to the atmosphere are less than 0.90 megagram per year, as determined by the procedures specified in § 63.772(b)(2) of this subpart.

(2) The owner or operator is exempt from the requirements of paragraph (c)(3) of this section for ancillary equipment (as defined in § 63.761) and compressors at a natural gas processing plant subject to this subpart, if the criteria listed in paragraphs (e)(2)(i) and (e)(2)(ii) are met. Records of the determination of these criteria must be maintained as required in § 63.774(d)(2) of this subpart.

(i) Any ancillary equipment and compressors that contain or contact a fluid (liquid or gas) must have a total VHAP concentration less than 10 percent by weight, as determined by the procedures specified in § 63.772(a) of this subpart; and

(ii) That ancillary equipment and compressors must operate in VHAP service less than 300 hours per calendar year.

(f) Each owner or operator of a major HAP source subject to this subpart is required to apply for a 40 CFR part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under 40 CFR part 70, the permit shall be obtained from the State authority. If a State operating permit program has not been approved, the owner or operator of a source shall apply to the EPA Regional Office pursuant to 40 CFR part 71.

(g) [Reserved]

(h) [Reserved]

(i) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take

action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by the applicable provisions of this subpart.

§ 63.765 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit subject to this subpart with an actual annual average natural gas flowrate equal to or greater than 85 thousand standard cubic meters per day and with actual average benzene glycol dehydration unit process vent emissions equal to or greater than 0.90 megagrams per year, that must be controlled for HAP emissions as specified in § 63.764(c)(1)(i).

(b) Except as provided in paragraph (c) of this section, an owner or operator of a glycol dehydration unit process vent shall comply with the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d).

(ii) The owner or operator shall connect the process vent to a control device or combination of control devices through a closed-vent system and the outlet benzene emissions from the control device(s) shall be reduced to a level less than 0.90 megagrams per year. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d), except that the performance levels specified in § 63.771(d)(1)(i) and (ii) do not apply.

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment installed to comply with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the requirements specified in paragraphs (c)(1) through (3) of this section.

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line.

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the glycol dehydration unit process vent are reduced by 95.0 percent through process modifications, or a combination of process modifications and one or more control devices, in accordance with the requirements specified in § 63.771(e).

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraphs (c)(3)(i) through (c)(3)(ii) of this section, through the installation and operation of controls as specified in paragraph (b)(1) of this section.

(i) HAP emissions are reduced by 95.0 percent or more.

(ii) Benzene emissions are reduced to a level less than 0.90 megagrams per year.

§ 63.766 Storage vessel standards.

(a) This section applies to each storage vessel with the potential for flash emissions (as defined in § 63.761) subject to this subpart.

(b) The owner or operator of a storage vessel with the potential for flash emissions (as defined in § 63.761) shall comply with one of the control requirements specified in paragraphs (b)(1) and (2) of this section.

(1) The owner or operator shall equip the affected storage vessel with the potential for flash emissions with a cover that is connected, through a closed-vent system that meets the conditions specified in § 63.771(c), to a control device or a combination of control devices that meets any of the conditions specified in § 63.771(d). The cover shall be designed and operated in accordance with the requirements of § 63.771(b).

(2) The owner or operator of a pressure storage vessel that is designed to operate as a closed system shall operate the storage vessel with no detectable emissions at all times that material is in the storage vessel, except as provided for in paragraph (c) of this section.

(c) One or more safety devices that vent directly to the atmosphere may be used on the storage vessel and air emission control equipment complying with paragraphs (b)(1) and (2) of this section.

(d) This section does not apply to storage vessels for which the owner or operator is meeting the requirements specified in 40 CFR part 60, subpart Kb; or is meeting the requirements specified in 40 CFR part 63, subparts G or CC.

§ 63.767 [Reserved].

§ 63.768 [Reserved].

§ 63.769 Equipment leak standards.

(a) This section applies to equipment subject to this subpart, located at natural gas processing plants and specified in paragraphs (a)(1) and (a)(2) of this section, that contains or contacts a fluid (liquid or gas) that has a total VHAP concentration equal to or greater than 10 percent by weight (determined according to the procedures specified in § 63.772(a)) and that operates in VHAP service equal to or greater than 300 hours per calendar year.

(1) Ancillary equipment, as defined in § 63.761; and

(2) Compressors.

(b) This section does not apply to ancillary equipment and compressors for which the owner or operator is meeting the requirements specified in subpart H of this part; or is meeting the requirements specified in 40 CFR part 60, subpart KKK.

(c) For each piece of ancillary equipment and each compressor subject to this section located at an existing or new source, the owner or operator shall meet the requirements specified in 40 CFR part 61, subpart V, §§ 61.241 through 61.247, except as specified in paragraphs (c)(1) through (8) of this section.

(1) Each pressure relief device in gas/vapor service shall be monitored quarterly and within 5 days after each pressure release to detect leaks, except under the following conditions.

(i) The owner or operator has obtained permission from the Administrator to use an alternative means of emission limitation that achieves a reduction in emissions of VHAP at least equivalent to that achieved by the control required in this subpart.

(ii) The pressure relief device is located in a nonfractionating facility that is monitored only by non-facility personnel, it may be monitored after a pressure release the next time the monitoring personnel are on site, instead of within 5 days. Such a pressure relief device shall not be allowed to operate for more than 30 days after a pressure release without monitoring.

(2) For pressure relief devices, if an instrument reading of 10,000 parts per

million or greater is measured, a leak is detected.

(3) For pressure relief devices, when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, unless a delay in repair of equipment is granted under 40 CFR 61.242–10.

(4) Sampling connection systems are exempt from the requirements of 40 CFR 61.242–5.

(5) Pumps in VHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant that does not have the design capacity to process 283,000 standard cubic meters per day or more of field gas are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and 61.242–7(a), and paragraphs (c)(1) through (3) of this section.

(6) Pumps in VHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service located within a natural gas processing plant that is located on the Alaskan North Slope are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and 61.242–7(a), and (c)(1) through (3) of this section.

(7) Reciprocating compressors in wet gas service are exempt from the compressor control requirements of 40 CFR 61.242–3.

(8) Flares used to comply with this subpart shall comply with the requirements of § 63.11(b).

§ 63.770 [Reserved].

§ 63.771 Control equipment requirements.

(a) This section applies to each cover, closed-vent system, and control device installed and operated by the owner or operator to control air emissions as required by the provisions of this subpart. Compliance with paragraphs (b), (c), and (d) of this section will be determined by review of the records required by § 63.774 and the reports required by § 63.775, by review of performance test results, and by inspections.

(b) *Cover requirements.* (1) The cover and all openings on the cover (e.g., access hatches, sampling ports, and gauge wells) shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(2) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit;

(iii) To inspect, maintain, repair, or replace equipment located inside the unit; or

(iv) To vent liquids, gases, or fumes from the unit through a closed-vent system to a control device designed and operated in accordance with the requirements of paragraphs (c) and (d) of this section.

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in a HAP emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) For each bypass device, except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device to the atmosphere that takes a reading at least once every 15 minutes and sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device used to reduce HAP emissions in accordance with the standards of this subpart shall be one of the control devices specified in paragraphs (d)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.772(e); or

(B) Reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.772(e); or

(C) Operates at a minimum residence time of 0.5 seconds at a minimum temperature of 760°C.

(D) If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g., carbon adsorption system or condenser) or other control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.772(e).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) [Reserved]

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section as specified in § 63.772(e).

(4) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (d)(4)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the HAP emissions unit or units through the closed-vent system to the control device, as required under §§ 63.765, 63.766, and 63.769, except when maintenance or repair on a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of § 63.773(d), the owner or operator shall demonstrate compliance according to

the requirements of § 63.772(f) or (g), as applicable.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) The spent carbon removed from the carbon adsorption system shall be either regenerated, reactivated, or burned in one of the units specified in paragraphs (d)(5)(ii)(A) through (d)(5)(ii)(G) of this section.

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart X.

(B) Regenerated or reactivated in a thermal treatment unit equipped with and operating air emission controls in accordance with this section.

(C) Regenerated or reactivated in a thermal treatment unit equipped with and operating organic air emission controls in accordance with a national emissions standard for HAP under another subpart in 40 CFR part 61 or this part.

(D) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart O.

(E) Burned in a hazardous waste incinerator which the owner or operator has designed and operates in accordance with the requirements of 40 CFR part 265, subpart O.

(F) Burned in a boiler or industrial furnace for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 266, subpart H.

(G) Burned in a boiler or industrial furnace which the owner or operator has designed and operates in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(e) *Process modification requirements.* Each owner or operator that chooses to comply with § 63.765(c)(2) shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The owner or operator shall determine glycol dehydration unit baseline operations (as defined in § 63.761). Records of glycol dehydration unit baseline operations shall be retained as required under § 63.774(b)(10).

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the percent HAP reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including, but not limited to, changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall HAP emission reduction.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(i) The owner or operator shall maintain records, as required in § 63.774(b)(11), that the facility continues to operate in accordance with the conditions specified under paragraph (e)(2) of this section.

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) of this section, except that the emission reduction achieved shall be the emission reduction specified for the control device(s) in paragraph (e)(2) of this section.

§ 63.772 Test methods, compliance procedures, and compliance demonstrations.

(a) *Determination of material VHAP or HAP concentration to determine the applicability of the equipment leak standards under this subpart (§ 63.769).* Each piece of ancillary equipment and compressors are presumed to be in VHAP service or in wet gas service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service or in wet gas service.

(1) For a piece of ancillary equipment and compressors to be considered not in VHAP service, it must be determined that the percent VHAP content can be reasonably expected never to exceed 10.0 percent by weight. For the purposes of determining the percent VHAP content of the process fluid that is contained in or contacts a piece of ancillary equipment or compressor, Method 18 of 40 CFR part 60, appendix A, shall be used.

(2) For a piece of ancillary equipment and compressors to be considered in wet gas service, it must be determined that it contains or contacts the field gas before the extraction of natural gas liquids.

(b) *Determination of glycol dehydration unit flowrate or benzene emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate or benzene emissions to meet the criteria for an exemption from control requirements under § 63.764(e)(1).

(1) The determination of actual flowrate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures natural gas flowrate to the glycol dehydration unit with an accuracy of plus or minus 2 percent or better. The owner or operator shall convert annual natural gas flowrate to a daily average by dividing the annual flowrate by the number of days per year the glycol dehydration unit processed natural gas.

(ii) The owner or operator shall document, to the Administrator's satisfaction, that the actual annual average natural gas flowrate to the glycol dehydration unit is less than 85 thousand standard cubic meters per day.

(2) The determination of actual average benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (b)(2)(i) or (b)(2)(ii) of this section. Emissions shall be determined either uncontrolled, or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be

determined using the procedures documented in the Gas Research Institute (GRI) report entitled ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18, 40 CFR Part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

(c) *No detectable emissions test procedure.* (1) The no detectable emissions test procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except that the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration less than 10,000 parts per million by volume.

(5) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(6)(i) Except as provided in paragraph (c)(6)(i) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the facility that will meet the performance criteria specified in paragraph (c)(6)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (c)(6)(i) of this section.

(7) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (c)(7)(i) or (c)(7)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (c)(8) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (c)(5) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (c)(8) of this section.

(8) A potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (c)(7) of this section, is less than 500 parts per million by volume.

(d) [Reserved]

(e) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.771(d)(1) or (e)(3)(ii) using either a performance test as specified in paragraph (e)(3) of this section or a design analysis as specified in paragraph (e)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (e)(5) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) The following control devices are exempt from the requirements to conduct performance tests and design analyses under this section:

(i) A flare that is designed and operated in accordance with § 63.11(b);

(ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) A boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(vi) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same methods specified in this section and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) An owner or operator shall design and operate each flare in accordance with the requirements specified in § 63.11(b) and in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(i) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(ii) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration when a flare is used.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.771(d)(1) or (e)(3)(ii), the owner or operator shall use the test methods and procedures specified in paragraphs (e)(3)(i) through (e)(3)(iv) of this section. The performance test shall be conducted according to the schedule specified in § 63.7(a)(2) and the results of the performance test shall be submitted in the Notification of Compliance Status Report as required in § 63.775(d)(1)(ii.

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites in paragraphs (e)(3)(i)(A) and (B) of this section. Any references to particulate

mentioned in Methods 1 and 1A do not apply to this section.

(A) To determine compliance with the control device percent reduction requirement specified in § 63.771(d)(1)(i)(A), (d)(1)(ii) or (e)(3)(ii), sampling sites shall be located at the inlet of the first control device, and at the outlet of the final control device.

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the sampling site shall be located at the outlet of the combustion device.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) To determine compliance with the control device percent reduction performance requirement in § 63.771(d)(1)(i)(A),(d)(1)(ii), and (e)(3)(ii), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A or Method 25A, 40 CFR part 60, appendix A; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate percent reduction efficiency:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(*1*) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij} M_{ij}\right) Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20°C.

(*2*) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, shall be summed using the equations in paragraph (e)(3)(iii)(B)(*1*) of this section.

(*3*) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equations in paragraph (e)(3)(iii)(B)(*1*) of this section.

(C) The percent reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100\%$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (e)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (e)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

(D) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(iv) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(A) The minimum sampling time for each run shall be 1 hour, in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The TOC concentration or total HAP concentration shall be calculated according to paragraph (e)(3)(iv)(B)(*1*) or (e)(3)(iv)(B)(*2*) of this section.

(*1*) The TOC concentration is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(*2*) The total HAP concentration shall be computed according to the equation in paragraph (e)(3)(iv)(B)(*1*) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(C) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration. The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(*2*) The TOC or HAP concentration shall be corrected for percent oxygen by using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

C_c = TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(4) For a design analysis conducted to meet the requirements of § 63.771(d)(1) or (e)(3)(ii), the owner or operator shall meet the requirements specified in paragraphs (e)(4)(i) and (e)(4)(ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.775(d)(1)(i).

(i) The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable control device as specified in paragraphs (e)(4)(i)(A) through (F) of this section.

(A) For a thermal vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(C) For a boiler or process heater, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(D) For a condenser, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the design analysis, an owner or operator may elect to use the procedures specified in paragraph (e)(5) of this section.

(E) For a regenerable carbon adsorption system, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(F) For a nonregenerable carbon adsorption system, such as a carbon canister, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems will incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(ii) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (e)(3) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(5) As an alternative to the procedures in paragraphs (e)(3) and (e)(4)(i)(D) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to determine condenser performance.

(f) *Compliance demonstration for control device performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in §§ 63.771(d)(1)(ii) and 63.765(c)(2). Compliance shall be demonstrated using the requirements in paragraphs (f)(1) through (f)(3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.771(d)(1)(ii) or § 63.765(c)(2), may demonstrate compliance according to paragraph (g) of this section. An owner or operator may switch between compliance with paragraph (f) of this section and compliance with paragraph (g) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.775(e), following the change.

(1) The owner or operator shall establish a site specific maximum or minimum monitoring parameter value (as appropriate) according to the requirements of § 63.773(d)(5)(i).

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.773(d)(4).

(3) Compliance with the operating parameter limit is achieved when the daily average of the monitoring parameter value calculated under paragraph (f)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (f)(1) of this section.

(g) *Compliance demonstration with percent reduction performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.771(d)(1)(ii) or § 63.765(c)(2) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (g)(1) through (g)(3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to § 63.773(d)(5)(ii).

(2) Compliance with the percent reduction requirement in § 63.771(d)(1)(ii) or § 63.765(c)(2) shall be demonstrated by the procedures in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

(i) The owner or operator must calculate the daily average condenser outlet temperature in accordance with § 63.773(d)(4).

(ii) The owner or operator shall determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated under paragraph (g)(2)(i) of this section and the condenser performance curve established under paragraph (g)(1) of this section.

(iii) Except as provided in paragraphs (g)(2)(iii) (A) and (B) of this section, at the end of each operating day, the

owner or operator shall calculate the 365-day average HAP emission reduction from the condenser efficiencies determined in paragraph (g)(2)(ii) of this section for the preceding 365 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.765(c)(2), the 365-day average HAP emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency determined in paragraph (g)(2)(ii) of this section, both for the previous 365 operating days.

(A) After the compliance dates specified in § 63.760(f), an owner or operator with less than 120 days of data for determining average HAP emission reduction, shall calculate the average HAP emission reduction for the first 120 days of operation after the compliance dates. Compliance with the performance requirements is achieved if the 120-day average HAP emission reduction is equal to or greater than 90.0 percent.

(B) After 120 days and no more than 364 days of operation after the compliance dates specified in § 63.760(f), the owner or operator shall calculate the average HAP emission reduction as the HAP emission reduction averaged over the number of days between the current day and the applicable compliance date. Compliance with the performance requirements is achieved if the average HAP emission reduction is equal to or greater than 90.0 percent.

(3) If the owner or operator has data for 365 days or more of operation, compliance is achieved with the emission limitation specified in § 63.771(d)(1)(ii) or § 63.765(c)(2) if the average HAP emission reduction calculated in paragraph (g)(2)(iii) of this section is equal to or greater than 95.0 percent.

§ 63.773 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of §§ 63.765 and 63.766.

(b) [Reserved]

(c) *Cover and closed-vent system inspection and monitoring requirements.* (1) For each closed-vent system or cover required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (c) (2) through (7) of this section.

(2) Except as provided in paragraphs (c) (5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2) (i) and (ii) of this section, and each cover shall be inspected according to the procedures and schedule specified in paragraph (c)(2)(iii) of this section.

(i) For each closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange), the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.772(c) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; or broken or missing caps or other closure devices. The owner or operator shall monitor a component or connection using the procedures in § 63.772(c) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced or the connection is unsealed.

(ii) For closed-vent system components other than those specified in paragraph (c)(2)(i) of this section, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.772(c) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual inspections according to the procedures specified in § 63.772(c) to demonstrate that the components or connections operate with no detectable emissions.

(C) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; or broken or missing caps or other closure devices.

(iii) For each cover, the owner or operator shall:

(A) Conduct visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover, or between the cover and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case where the tank is buried partially or entirely underground, inspection is required only for those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (e.g., fill ports, access hatches, gauge wells, etc.) and can be opened to the atmosphere.

(B) The inspections shall be conducted initially, following the installation of the cover. Thereafter, the owner or operator shall perform the inspection at least once every calendar year, except as provided in paragraphs (c) (5) and (6) of this section.

(3) In the event that a leak or defect is detected, the owner or operator shall repair the leak or defect as soon as practicable, except as provided in paragraph (c)(4) of this section.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Repair shall be completed no later than 15 calendar days after the leak is detected.

(4) Delay of repair of a closed-vent system or cover for which leaks or defects have been detected is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.761, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next shutdown.

(5) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(5) (i) and (ii) of this section, as unsafe to inspect are exempt from the inspection requirements of paragraphs (c)(2)(i), (ii), and (iii) of this section if:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (c)(2)(i), (ii), or (iii) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(6) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(6) (i) and (ii) of this section, as difficult to inspect are exempt from the inspection requirements of paragraphs (c)(2)(i), (ii), and (iii) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(7) Records shall be maintained as specified in § 63.774(b)(5) through (8).

(d) *Control device monitoring requirements.* (1) For each control device, except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 63.771(d) or § 63.771(e)(3). The continuous parameter monitoring system shall meet the following specifications and requirements:

(i) Each continuous parameter monitoring system shall measure data values at least once every hour and record either:

(A) Each measured data value; or

(B) Each block average value for each 1-hour period or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values.

(ii) The monitoring system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications or other written procedures that provide reasonable assurance that the monitoring equipment is operating properly.

(2) An owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(3) through (9) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with the primary fuel or is used as the primary fuel; or

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section.

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C ,or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system:

(*1*) A continuous parameter monitoring system to measure and record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The integrating regenerating stream flow monitoring device must have an accuracy of ±10 percent; and

(*2*) A continuous parameter monitoring system to measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and to measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater.

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.772(e)(3) or a design analysis in accordance with § 63.772(e)(4)(i)(F) and shall be based on the total carbon working capacity of the control device and source operating schedule.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder. The monitor must meet the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60 and must be installed, calibrated, and maintained according to the manufacturer's specifications.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8(f)(1) through (5).

(4) Using the data recorded by the monitoring system, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If the HAP emissions unit operation is continuous, the operating day is a 24-hour period. If HAP emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) For each operating parameter monitor installed in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall comply with paragraph (d)(5)(i) of this section for all control devices except for condensers, and when condensers are installed, the owner or operator shall also comply with paragraph (d)(5)(ii) of this section.

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1) or § 63.771(e)(3)(ii). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.772(e)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1) or § 63.771(e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis or control device manufacturer recommendations or a combination of both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.772(e)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1) or (e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and may be supplemented by the control device manufacturer's recommendations.

(ii) The owner or operator shall establish a condenser performance curve showing the relationship between condenser outlet temperature and condenser control efficiency. The curve shall be established as follows:

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.772(e)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.771(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination or both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.772(e)(4)(i)(D) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.771(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraphs (d)(5)(ii)(A) and (B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(6) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day and more than one of these operating parameters meets an excursion criterion specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

(i) An excursion occurs when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the operating parameter in accordance with the requirements of paragraph (d)(5)(i) of this section.

(ii) An excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than 95.0 percent.

(iii) If an owner or operator has less than 365 days of data, an excursion occurs when the average condenser efficiency calculated according to the procedures specified in § 63.772(g)(2)(iii)(A) or (B) is less than 90.0 percent.

(iv) An excursion occurs when the monitoring data are not available for at least 75 percent of the operating hours.

(v) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, an excursion occurs when:

(A) For each bypass line subject to § 63.771(c)(3)(i)(A) the flow indicator indicates that flow has been detected and that the stream has been diverted away from the control device to the atmosphere.

(B) For each bypass line subject to § 63.771(c)(3)(i)(B), if the seal or closure mechanism has been broken, the bypass line valve position has changed, the key for the lock-and-key type lock has been checked out, or the car-seal has broken.

(7) For each excursion, except as provided for in paragraph (d)(8) of this section, the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

(8) An excursion is not a violation of the operating parameter limit as specified in paragraphs (d)(8)(i) and (d)(8)(ii) of this section.

(i) An excursion does not count toward the number of excused excursions allowed under paragraph (d)(8)(ii) of this section when the excursion occurs during any one of the following periods:

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with the facility's startup, shutdown, and malfunction plan; or

(B) During periods of non-operation of the unit or the process that is vented to the control device (resulting in cessation of HAP emissions to which the monitoring applies).

(ii) For each control device, or combinations of control devices installed on the same HAP emissions unit, one excused excursion is allowed per semiannual period for any reason. The initial semiannual period is the 6-month reporting period addressed by the first Periodic Report submitted by the owner or operator in accordance with § 63.775(e) of this subpart.

(9) Nothing in paragraphs (d)(1) through (d)(8) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart.

§ 63.774 Recordkeeping requirements.

(a) The recordkeeping provisions of 40 CFR part 63, subpart A, that apply and those that do not apply to owners and operators of sources subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a facility subject to this subpart shall maintain the records specified in paragraphs (b)(1) through (b)(11) of this section:

(1) The owner or operator of an affected source subject to the provisions of this subpart shall maintain files of all information (including all reports and notifications) required by this subpart. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report or period.

(i) All applicable records shall be maintained in such a manner that they can be readily accessed.

(ii) The most recent 12 months of records shall be retained on site or shall be accessible from a central location by

computer or other means that provides access within 2 hours after a request.

(iii) The remaining 4 years of records may be retained offsite.

(iv) Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) Records specified in § 63.10(b)(2);

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.773(d). Notwithstanding the requirements of § 63.10(c), monitoring data recorded during periods identified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Startups, shutdowns, or malfunctions events. During startups, shutdowns, or malfunction events, the owner or operator shall maintain records indicating whether or not the startup, shutdown or malfunction plan required under § 63.762(d), was followed.

(iii) Periods of non-operation resulting in cessation of the emissions to which the monitoring applies; and

(iv) Excursions due to invalid data as defined in § 63.773(d)(6)(iv).

(4) Each owner or operator using a control device to comply with § 63.764 of this subpart shall keep the following records up-to-date and readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.773(d) of this subpart or specified by the Administrator in accordance with § 63.773(d)(3)(iii) of this subpart. For flares, the hourly records and records of pilot flame outages specified in § 63.773(d)(3)(i)(C) of this subpart shall be maintained in place of continuous records.

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.773(d)(4) of this subpart, except as specified in paragraphs (b)(4)(ii)(A) and (B) of this section.

(A) For flares, records of the times and duration of all periods during which all pilot flames are absent shall be kept rather than daily averages.

(B) For condensers installed to comply with § 63.765, records of the annual 365-day rolling average condenser efficiency determined under § 63.772(g) shall be kept in addition to the daily averages.

(iii) Hourly records of whether the flow indicator specified under § 63.771(c)(3)(i)(A) was operating and whether flow was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the monitor is not operating.

(iv) Where a seal or closure mechanism is used to comply with § 63.771(c)(3)(i)(B), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanism has been done, and shall record the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(5) Records identifying all parts of the cover or closed-vent system that are designated as unsafe to inspect in accordance with § 63.773(c)(5), an explanation of why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(6) Records identifying all parts of the cover or closed-vent system that are designated as difficult to inspect in accordance with § 63.773(c)(6), an explanation of why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(7) For each inspection conducted in accordance with § 63.773(c), during which a leak or defect is detected, a record of the information specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this section.

(i) The instrument identification numbers, operator name or initials, and identification of the equipment.

(ii) The date the leak or defect was detected and the date of the first attempt to repair the leak or defect.

(iii) Maximum instrument reading measured by the method specified in § 63.772(c) after the leak or defect is successfully repaired or determined to be nonrepairable.

(iv) ''Repair delayed'' and the reason for the delay if a leak or defect is not repaired within 15 calendar days after discovery of the leak or defect.

(v) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vi) The expected date of successful repair of the leak or defect if a leak or defect is not repaired within 15 calendar days.

(vii) Dates of shutdowns that occur while the equipment is unrepaired.

(viii) The date of successful repair of the leak or defect.

(8) For each inspection conducted in accordance with § 63.773(c) during which no leaks or defects are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(9) Records identifying ancillary equipment and compressors that are subject to and controlled under the provisions of 40 CFR part 60, subpart KKK; 40 CFR part 61, subpart V; or 40 CFR part 63, subpart H.

(10) Records of glycol dehydration unit baseline operations calculated as required under § 63.771(e)(1).

(11) Records required in § 63.771(e)(3)(i) documenting that the facility continues to operate under the conditions specified in § 63.771(e)(2).

(c) An owner or operator that elects to comply with the benzene emission limit specified in § 63.765(b)(1)(ii) shall document, to the Administrator's satisfaction, the following items:

(1) The method used for achieving compliance and the basis for using this compliance method; and

(2) The method used for demonstrating compliance with 0.90 megagrams per year of benzene.

(3) Any information necessary to demonstrate compliance as required in the methods specified in paragraphs (c)(1) and (c)(2) of this section.

(d) (1) An owner or operator that is exempt from control requirements under § 63.764(e)(1) shall maintain the records specified in paragraph (d)(1)(i) or (d)(1)(ii) of this section, as appropriate, for each glycol dehydration unit that is not controlled according to the requirements of § 63.764(c)(1)(i).

(i) The actual annual average natural gas throughput (in terms of natural gas flowrate to the glycol dehydration unit per day) as determined in accordance with § 63.772(b)(1), or

(ii) The actual average benzene emissions (in terms of benzene emissions per year) as determined in accordance with § 63.772(b)(2).

(2) An owner or operator that is exempt from the control requirements under § 63.764(e)(2) of this subpart shall maintain the following records:

(i) Information and data used to demonstrate that a piece of equipment is not in VHAP service or not in wet gas service shall be recorded in a log that is kept in a readily accessible location.

(ii) Identification and location of equipment, located at a natural gas processing plant subject to this subpart, that is in VHAP service less than 300 hours per year.

(e) Record the following when using a flare to comply with § 63.771(d):

(1) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(2) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.772(e)(2); and

(3) All periods during the compliance determination when the pilot flame is absent.

§ 63.775 Reporting requirements.

(a) The reporting provisions of subpart A of this part, that apply and those that do not apply to owners and operators of sources subject to this subpart are listed in Table 2 of this subpart.

(b) Each owner or operator of a major source subject to this subpart shall submit the information listed in paragraphs (b)(1) through (b)(6) of this section, except as provided in paragraphs (b)(7) and (b)(8) of this section.

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000 and plan to be area sources by June 17, 2002 shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(2) The date of the performance evaluation as specified in § 63.8(e)(2), required only if the owner or operator is required by the Administrator to conduct a performance evaluation for a continuous monitoring system. A separate notification of the performance evaluation is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(3) The planned date of a performance test at least 60 days before the test in accordance with § 63.7(b). Unless requested by the Administrator, a site-specific test plan is not required by this subpart. If requested by the Administrator, the owner or operator must also submit the site-specific test plan required by § 63.7(c) with the notification of the performance test. A separate notification of the performance test is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(4) A Notification of Compliance Status report as described in paragraph (d) of this section;

(5) Periodic Reports as described in paragraph (e) of this section; and

(6) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) shall be submitted as required. Separate startup, shutdown, and malfunction reports as described in § 63.10(d)(5) are not required if the information is included in the Periodic Report specified in paragraph (e) of this section.

(7) Each owner or operator of a glycol dehydration unit subject to this subpart that is exempt from the control requirements for glycol dehydration unit process vents in § 63.765, is exempt from all reporting requirements for major sources in this subpart, for that unit.

(8) Each owner or operator of ancillary equipment and compressors subject to this subpart that are exempt from the control requirements for equipment leaks in § 63.769, are exempt from all reporting requirements for major sources in this subpart, for that equipment.

(c) [Reserved]

(d) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status Report as required under § 63.9(h) within 180 days after the compliance date specified in § 63.760(f). In addition to the information required under § 63.9(h), the Notification of Compliance Status Report shall include the information specified in paragraphs (d)(1) through (d)(11) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If all of the information required under this paragraph has been submitted at any time prior to 180 days after the applicable compliance dates specified in § 63.760(f), a separate Notification of Compliance Status Report is not required. If an owner or operator submits the information specified in paragraphs (d)(1) through (d)(11) of this section at different times, and/or different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information.

(1) If a closed-vent system and a control device other than a flare are used to comply with § 63.764, the owner or operator shall submit:

(i) The design analysis documentation specified in § 63.772(e)(4) of this subpart, if the owner or operator elects to prepare a design analysis; or

(ii) If the owner or operator elects to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.772(e)(3) and that the test conditions are representative of current operating conditions.

(A) The percent reduction of HAP or TOC, or the outlet concentration of HAP or TOC (parts per million by volume on a dry basis), determined as specified in § 63.772(e)(3) of this subpart; and

(B) The value of the monitored parameters specified in § 63.773(d) of this subpart, or a site-specific parameter approved by the permitting agency, averaged over the full period of the performance test.

(2) If a closed-vent system and a flare are used to comply with § 63.764, the owner or operator shall submit performance test results including the information in paragraphs (d)(2) (i) and (ii) of this section.

(i) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.772(e)(2) of this subpart, and

(ii) A statement of whether a flame was present at the pilot light over the full period of the compliance determination.

(3) For each owner or operator subject to the provisions specified in § 63.769, the owner or operator shall submit the information required by § 61.247(a), except that the initial report required in § 61.247(a) shall be submitted as a part of the Notification of Compliance Status Report required in paragraph (d) of this section. The owner or operator shall also submit the information specified in paragraphs (d)(3) (i) and (ii) of this section.

(i) The number of each equipment (e.g., valves, pumps, etc.) excluding equipment in vacuum service, and

(ii) Any change in the information submitted in this paragraph shall be provided to the Administrator as a part of subsequent Periodic Reports described in paragraph (e)(2)(iv) of this section.

(4) The owner or operator shall submit one complete test report for each test method used for a particular source.

(i) For additional tests performed using the same test method, the results

specified in paragraph (d)(1)(ii) of this section shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(5) For each control device other than a flare used to meet the requirements of § 63.764, the owner or operator shall submit the information specified in paragraphs (d)(5) (i) through (iii) of this section for each operating parameter required to be monitored in accordance with the requirements of § 63.773(d).

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1) or (e)(3)(ii).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.773(d)(5). This explanation shall include any data and calculations used to develop the value and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1) or § 63.771(e)(3)(ii).

(iii) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(6) Results of any continuous monitoring system performance evaluations shall be included in the Notification of Compliance Status Report.

(7) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this subpart. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this subpart, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in this subpart.

(8) The owner or operator that elects to comply with the requirements of § 63.765(b)(1)(ii) shall submit the records required under § 63.774(c).

(9) The owner or operator shall submit an analysis demonstrating whether an affected source is a major source using the maximum throughput calculated according to § 63.760(a)(1).

(10) The owner or operator shall submit a statement as to whether the source has complied with the requirements of this subpart.

(11) The owner or operator shall submit the analysis prepared under § 63.771(e)(2) to demonstrate the conditions by which the facility will be operated to achieve an overall HAP emission reduction of 95.0 percent through process modifications or a combination of process modifications and one or more control devices.

(e) *Periodic Reports.* An owner or operator shall prepare Periodic Reports in accordance with paragraphs (e) (1) and (2) of this section and submit them to the Administrator.

(1) An owner or operator shall submit Periodic Reports semiannually, beginning 60 operating days after the end of the applicable reporting period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status Report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status Report is due.

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (ix) of this section, as applicable.

(i) The information required under § 63.10(e)(3). For the purposes of this subpart and the information required under § 63.10(e)(3), excursions (as defined in § 63.773(d)(6)) shall be considered excess emissions.

(ii) A description of all excursions as defined in § 63.773(d)(6) of this subpart that have occurred during the 6-month reporting period.

(A) For each excursion caused when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit), as specified in § 63.773(d)(6)(i), the report must include the daily average values of the monitored parameter, the applicable operating parameter limit, and the date and duration of the period that the excursion occurred.

(B) For each excursion caused when the 365-day average condenser control efficiency is less than 95.0 percent, as specified in § 63.773(d)(6)(ii), the report must include the 365-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(C) For each excursion caused when condenser control efficiency is less than 90.0 percent, as calculated according to the procedures specified in § 63.772(g)(2)(iii) (A) or (B), the report must include the average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(D) For each excursion caused by lack of monitoring data, as specified in § 63.773(d)(6)(iii), the report must include the date and duration of the period when the monitoring data were not collected and the reason why the data were not collected.

(iii) For each inspection conducted in accordance with § 63.773(c) during which a leak or defect is detected, the records specified in § 63.774(b)(7) must be included in the next Periodic Report.

(iv) For each owner or operator subject to the provisions specified in § 63.769, the owner or operator shall comply with the reporting requirements specified in 40 CFR 61.247, except that the Periodic Reports shall be submitted on the schedule specified in paragraph (e)(1) of this section.

(v) For each closed-vent system with a bypass line subject to § 63.771(c)(3)(i)(A), records required under § 63.774(b)(4)(iii) of all periods when the vent stream is diverted from the control device through a bypass line. For each closed-vent system with a bypass line subject to § 63.771(c)(3)(i)(B), records required under § 63.774(b)(4)(iv) of all periods in which the seal mechanism is broken, the bypass valve position has changed, or the key to unlock the bypass line valve was checked out.

(vi) If an owner or operator elects to comply with § 63.765(b)(1)(ii), the records required under § 63.774(c)(3).

(vii) The information in paragraphs (e)(2)(vii) (A) and (B) of this section shall be stated in the Periodic Report, when applicable.

(A) No excursions.

(B) No continuous monitoring system has been inoperative, out of control, repaired, or adjusted.

(viii) Any change in compliance methods as specified in § 63.772(f).

(ix) If the owner or operator elects to comply with § 63.765(c)(2), the records required under § 63.774(b)(11).

(f) *Notification of process change.* Whenever a process change is made, or

a change in any of the information submitted in the Notification of Compliance Status Report, the owner or operator shall submit a report within 180 days after the process change is made or as a part of the next Periodic Report as required under paragraph (e) of this section, whichever is sooner. The report shall include:

(1) A brief description of the process change;

(2) A description of any modification to standard procedures or quality assurance procedures;

(3) Revisions to any of the information reported in the original Notification of Compliance Status Report under paragraph (d) of this section; and

(4) Information required by the Notification of Compliance Status Report under paragraph (d) of this section for changes involving the addition of processes or equipment.

§ 63.776 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities will not be delegated to States for §§ 63.772 and 63.777 of this subpart.

§ 63.777 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.764 through 63.771, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information demonstrating that the alternative achieves equivalent emission reductions.

§ 63.778 [Reserved]

§ 63.779 [Reserved]

Appendix to Subpart HH—Tables

TABLE 1 TO SUBPART HH.—LIST OF HAZARDOUS AIR POLLUTANTS FOR SUBPART HH

CAS Number [a]	Chemical name
75070 ...	Acetaldehyde
71432 ...	Benzene (includes benzene in gasoline)
75150 ...	Carbon disulfide
463581	Carbonyl sulfide
100414	Ethyl benzene
107211	Ethylene glycol
50000 ...	Formaldehyde
110543	n-Hexane
91203 ...	Naphthalene
108883	Toluene
540841	2,2,4-Trimethylpentane
1330207	Xylenes (isomers and mixture)
95476 ...	o-Xylene
108383	m-Xylene
106423	p-Xylene

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
§ 63.1(a)(1)	Yes	
§ 63.1(a)(2)	Yes	
§ 63.1(a)(3)	Yes	
§ 63.1(a)(4)	Yes	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6) through (a)(8)	Yes	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes	
§ 63.1(a)(11)	Yes	
§ 63.1(a)(12) through (a)(14)	Yes	
§ 63.1(b)(1)	No	Subpart HH specifies applicability.
§ 63.1(b)(2)	Yes	
§ 63.1(b)(3)	No	
§ 63.1(c)(1)	No	Subpart HH specifies applicability.
§ 63.1(c)(2)	No	
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes	
§ 63.1(c)(5)	Yes	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HH.
§ 63.3(a) through (c)	Yes	
§ 63.4(a)(1) through (a)(3)	Yes	
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	Yes	
§ 63.4(b)	Yes	
§ 63.4(c)	Yes	
§ 63.5(a)(1)	Yes	
§ 63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes	

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.5(b)(4)	Yes	
§ 63.5(b)(5)	Yes	
§ 63.5(b)(6)	Yes	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes	
§ 63.5(d)(2)	Yes	
§ 63.5(d)(3)	Yes	
§ 63.5(d)(4)	Yes	
§ 63.5(e)	Yes	
§ 63.5(f)(1)	Yes	
§ 63.5(f)(2)	Yes	
§ 63.6(a)	Yes	
§ 63.6(b)(1)	Yes	
§ 63.6(b)(2)	Yes	
§ 63.6(b)(3)	Yes	
§ 63.6(b)(4)	Yes	
§ 63.6(b)(5)	Yes	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes	
§ 63.6(c)(1)	Yes	
§ 63.6(c)(2)	Yes	
§ 63.6(c)(3) through (c)(4)	No	Section reserved.
§ 63.6(c)(5)	Yes	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes	Except as otherwise specified.
§ 63.6(e)(1)(i)	No	Addressed in § 63.762.
§ 63.6(e)(1)(ii)	Yes	
§ 63.6(e)(1)(iii)	Yes	
§ 63.6(e)(2)	Yes	
§ 63.6(e)(3)(i)	Yes	Except as otherwise specified.
§ 63.6(e)(3)(i)(A)	No	Addressed by § 63.762(c).
§ 63.6(e)(3)(i)(B)	Yes	
§ 63.6(e)(3)(i)(C)	Yes	
§ 63.6(e)(3)(ii) through (3)(vi)	Yes	
§ 63.6(e)(3)(vii).		
§ 63.6(e)(3)(vii)(A)	Yes	
§ 63.6(e)(3)(vii)(B)	Yes	Except that the plan must provide for operation in compliance with § 63.762(c).
§ 63.6(e)(3)(vii)(C)	Yes	
§ 63.6(e)3)(viii)	Yes	
§ 63.6(f)(1)	Yes	
§ 63.6(f)(2)	Yes	
§ 63.6(f)(3)	Yes	
§ 63.6(g)	Yes	
§ 63.6(h)	No	Subpart HH does not require continuous emissions monitoring systems.
§ 63.6(i)(1) through (i)(14)	Yes	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes	
§ 63.6(j)	Yes	
§ 63.7(a)(1)	Yes	
§ 63.7(a)(2)	Yes	
§ 63.7(a)(3)	Yes	
§ 63.7(b)	Yes	
§ 63.7(c)	Yes	
§ 63.7(d)	Yes	
§ 63.7(e)(1)	Yes	
§ 63.7(e)(2)	Yes	
§ 63.7(e)(3)	Yes	
§ 63.7(e)(4)	Yes	
§ 63.7(f)	Yes	
§ 63.7(g)	Yes	
§ 63.7(h)	Yes	
§ 63.8(a)(1)	Yes	
§ 63.8(a)(2)	Yes	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes	
§ 63.8(b)(1)	Yes	
§ 63.8(b)(2)	Yes	
§ 63.8(b)(3)	Yes	
§ 63.8(c)(1)	Yes	
§ 63.8(c)(2)	Yes	
§ 63.8(c)(3)	Yes	

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.8(c)(4)	No	
§ 63.8(c)(5) through (c)(8)	Yes	
§ 63.8(d)	Yes	
§ 63.8(e)	Yes	Subpart HH does not specifically require continuous emissions monitor performance evaluations, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes	
§ 63.8(f)(6)	No	Subpart HH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes	
§ 63.9(b)(1)	Yes	
§ 63.9(b)(2)	Yes	Sources are given 1 year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes	
§ 63.9(b)(4)	Yes	
§ 63.9(b)(5)	Yes	
§ 63.9(c)	Yes	
§ 63.9(d)	Yes	
§ 63.9(e)	Yes	
§ 63.9(f)	Yes	
§ 63.9(g)	Yes	
§ 63.9(h)(1) through (h)(3)	Yes	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) through (h)(6)	Yes	
§ 63.9(i)	Yes	
§ 63.9(j)	Yes	
§ 63.10(a)	Yes	
§ 63.10(b)(1)	Yes	
§ 63.10(b)(2)	Yes	
§ 63.10(b)(3)	No	
§ 63.10(c)(1)	Yes	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) Through (c)(8)	Yes	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (c)(15)	Yes	
§ 63.10(d)(1)	Yes	
§ 63.10(d)(2)	Yes	
§ 63.10(d)(3)	Yes	
§ 63.10(d)(4)	Yes	
§ 63.10(d)(5)	Yes	Subpart HH requires major sources to submit a startup, shutdown and malfunction report semi-annually.
§ 63.10(e)(1)	Yes	
§ 63.10(e)(2)	Yes	
§ 63.10(e)(3)(i)	Yes	Subpart HH requires major sources to submit Periodic Reports semi-annually.
§ 63.10(e)(3)(i)(A)	Yes	
§ 63.10(e)(3)(i)(B)	Yes	
§ 63.10(e)(3)(i)(C)	No	Subpart HH does not require quarterly reporting for excess emissions.
§ 63.10(e)(3)(ii) through (viii)	Yes	
§ 63.10(f)	Yes	
§ 63.11(a) and (b)	Yes	
§ 63.12(a) through (c)	Yes	
§ 63.13(a) through (c)	Yes	
§ 63.14(a) and (b)	Yes	
§ 63.15(a) and (b)	Yes	

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. Part 63 is amended by adding subpart HHH to read as follows:

Subpart HHH—National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

Sec.

63.1270 Applicability and designation of affected source.
63.1271 Definitions.
63.1272 Startups, shutdowns, and malfunctions.
63.1273 [Reserved]
63.1274 General standards.
63.1275 Glycol dehydration unit process vent standards.
63.1276–63.1280 [Reserved]
63.1281 Control equipment requirements.
63.1282 Test methods, compliance procedures, and compliance demonstrations.
63.1283 Inspection and monitoring requirements.
63.1284 Recordkeeping requirements.
63.1285 Reporting requirements.
63.1286 Delegation of authority.
63.1287 Alternative means of emission limitation.

63.1288 [Reserved]
63.1289 [Reserved]
Appendix to Subpart HHH—Tables

Subpart HHH—National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners and operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company), and that are major sources of hazardous air pollutants (HAP) emissions as determined using the maximum natural gas throughput calculated in either paragraph (a)(1) or (a)(2) of this section and paragraphs (a)(3) and (a)(4) of this section. A compressor station that transports natural gas prior to the point of custody transfer, or to a natural gas processing plant (if present) is considered a part of the oil and natural gas production source category. A facility that is determined to be an area source, based on emission estimates using the maximum natural gas throughput calculated as specified in paragraph (a)(1) or (a)(2) of this section, but subsequently increases emissions or potential to emit above the major source levels (without first obtaining and complying with other limitations that keep its potential to emit HAP below major source levels, becomes a major source and must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (d) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(1) Facilities that store natural gas or facilities that transport and store natural gas shall determine major source status using the maximum annual facility natural gas throughput calculated according to paragraphs (a)(1)(i) through (a)(1)(iv) of this section.

(i) The owner or operator shall determine the number of hours to complete the storage cycle for the facility. The storage cycle is the number of hours for the injection cycle, calculated according to the equation in paragraph (a)(1)(i)(A) of this section, plus the number of hours for the withdrawal cycle, calculated according to the equation in paragraph (a)(1)(i)(B) of this section.

(A) The hours for the facility injection cycle are determined according to the following equation:

$$IC = \frac{WGC}{IR_{max}}$$

Where:

IC = Facility injection cycle in hours/cycle.

WGC = Working gas capacity in cubic meters. The working gas capacity is defined as the maximum storage capacity minus the FERC cushion (as defined in § 63.1271).

IR_{max} = Maximum facility injection rate in cubic meters per hour.

(B) The hours for the facility withdrawal cycle are determined according to the following equation:

$$WC = \frac{WGC}{WR_{max}}$$

Where:

WC = Facility withdrawal cycle, hours/cycle.

WGC = Working gas capacity, cubic meters. The working gas capacity is defined as the maximum storage capacity minus the FERC cushion (as defined in § 63.1271) and shall be the same value as used in paragraph (a)(1)(i)(A) of this section.

WR_{max} = Maximum facility withdrawal rate in cubic meters per hour.

(ii) The owner or operator shall calculate the number of storage cycles for the facility per year according to the following equation:

$$Cycle = \frac{8760\ hr/yr}{IC + WC}$$

Where:

Cycle = Number of storage cycles for the facility per year.

IC = Number of hours for a facility injection cycle, hours/cycle, as calculated in paragraph (a)(1)(i)(A) of this section.

WC = Number of hours for a facility withdrawal cycle, hours/cycle, as calculated in paragraph (a)(1)(i)(B) of this section.

(iii) The owner or operator shall calculate the facilitywide maximum annual glycol dehydration unit hours of operation based on the following equation:

$$Operation = Cycles \times WC$$

Where:

Operation = Facilitywide maximum annual glycol dehydration unit hours of operation (hr/yr).

Cycles = Number of storage cycles for the facility per year, as calculated in paragraph (a)(1)(ii) of this section.

WC = Number of hours for a facility withdrawal cycle, hours/cycle, as calculated in paragraph (a)(1)(i)(B) of this section.

(iv) The owner or operator shall calculate the maximum facilitywide natural gas throughput based on the following equation:

$$Throughput = Operation \times WR_{max}$$

Where:

Throughput = Maximum facilitywide natural gas throughput in cubic meters per year.

Operation = Maximum facilitywide annual glycol dehydration unit hours of operation in hours per year, as calculated in paragraph (a)(1)(iii) of this section.

WR_{max} = Maximum facility withdrawal rate in cubic meters per hour.

(2) Facilities that only transport natural gas shall calculate the maximum natural gas throughput as the highest annual natural gas throughput over the 5 years prior to June 17, 1999, multiplied by a factor of 1.2.

(3) The owner or operator shall maintain records of the annual facility natural gas throughput each year and upon request, submit such records to the Administrator. If the facility annual natural gas throughput increases above the maximum natural gas throughput calculated in paragraph (a)(1) or (a)(2) of this section, the maximum natural gas throughput must be recalculated using the higher throughput multiplied by a factor of 1.2.

(4) The owner or operator shall determine the maximum values for other parameters used to calculate potential emissions as the maximum over the same period for which maximum throughput is determined as specified in paragraph (a)(1) or (a)(2) of this section. These parameters shall be based on an annual average or the highest single measured value.

(b) The affected source is each glycol dehydration unit.

(c) The owner or operator of a facility that does not contain an affected source, as specified in paragraph (b) of this section, is not subject to the requirements of this subpart.

(d) The owner or operator of each affected source shall achieve compliance with the provisions of this subpart by the following dates:

(1) The owner or operator of an affected source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with this provisions of the subpart no later than June 17, 2002 except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) The owner or operator of an affected source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(e) An owner or operator of an affected source that is a major source or is located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 or part 71 permitting requirements.

(f) *Exemptions.* A facility with a facilitywide actual annual average natural gas throughput less than 28.3 thousand standard cubic meters per day, where glycol dehydration units are the only HAP emission source, is not subject to the requirements of this subpart. Records shall be maintained as required in § 63.10(b)(3).

§ 63.1271 Definitions.

All terms used in this subpart shall have the meaning given to them in the Clean Air Act, subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering and exporting thermal energy in the form of steam or hot water. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and if necessary, flow inducing devices that transport gas or vapor from an emission point to one or more control devices. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the conveyance system shall not be considered a closed-vent system and is not subject to closed-vent system standards.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic HAP emissions.

Compressor station means any permanent combination of compressors that move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every hour or records hourly or more frequent block average values.

Control device means any equipment used for recovering or oxidizing HAP or volatile organic compounds (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused (i.e., injected into the flame zone of a combustion device), returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be control devices or closed-vent systems.

Custody transfer means the transfer of hydrocarbon liquids or natural gas:

(1) After processing and/or treatment in the producing operations; or

(2) From storage vessels or automatic transfer facilities, or other equipment, including product loading racks, to pipelines or any other forms of transportation.

Facility means any grouping of equipment where natural gas is processed, compressed, or stored prior to entering a pipeline to a local distribution company or (if there is no local distribution company) to a final end user. Examples of a facility for this source category are: an underground natural gas storage operation; or a natural gas compressor station that receives natural gas via pipeline, from an underground natural gas storage operation, or from a natural gas processing plant. The emission points associated with these phases include, but are not limited to, process vents. Processes that may have vents include, but are not limited to, dehydration and compressor station engines.

Facility, for the purpose of a major source determination, means natural gas transmission and storage equipment that is located inside the boundaries of an individual surface site (as defined in this section) and is connected by ancillary equipment, such as gas flow lines or power lines. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Natural gas transmission and storage equipment or groupings of equipment located on different gas leases, mineral fee tracts, lease tracts, subsurface unit areas, surface fee tracts, or surface lease tracts shall not be considered part of the same facility.

Federal Energy Regulatory Commission Cushion or *FERC Cushion* means the minimum natural gas capacity of a storage field as determined by the Federal Energy Regulatory Commission.

Flame zone means the portion of the combustion chamber in a combustion device occupied by the flame envelope.

Flash tank. See the definition for gas-condensate-glycol (GCG) separator.

Flow indicator means a device which indicates whether gas flow is present in

a line or whether the valve position would allow gas flow to be present in a line.

Gas-condensate-glycol (GCG) separator means a two-or three-phase separator through which the ''rich'' glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Glycol dehydration unit means a device in which a liquid glycol (including, but not limited to, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes ''rich'' glycol. This glycol is then regenerated in the glycol dehydration unit reboiler. The ''lean'' glycol is then recycled.

Glycol dehydration unit baseline operations means operations representative of the glycol dehydration unit operations as of June 17, 1999. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, glycol dehydration unit baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (i.e., at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent and the vent from the GCG separator (flash tank), if present.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere or to a control device.

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Clean Air Act (Act). All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining compliance.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Initial startup means the first time a new or reconstructed source begins production. For the purposes of this subpart, initial startup does not include subsequent startups (as defined in this section) of equipment, for example, following malfunctions or shutdowns.

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control; and

(2) Emissions from processes, operations, and equipment that are not part of the same facility, as defined in this section, shall not be aggregated.

Natural gas means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface. The principal hydrocarbon constituent is methane.

Natural gas transmission means the pipelines used for the long distance transport of natural gas (excluding processing). Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

No detectable emissions means no escape of HAP from a device or system to the atmosphere as determined by:

(1) Instrument monitoring results in accordance with the requirements of § 63.1282(b); and

(2) The absence of visible openings or defects in the device or system, such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, indicates that an owner or operator has complied with an applicable operating parameter limitation, over the appropriate averaging period as specified in § 63.1282 (e) and (f).

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means an instrument used to indicate the concentration level of organic compounds exiting a control device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50 percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed device using a controlled flame, the primary purpose of which is to transfer heat to a process fluid or process material that is not a fluid, or to a heat transfer material for use in a process (rather than for steam generation) .

Safety device means a device that meets both of the following conditions: the device is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and the device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a glycol dehydration unit, or other affected source under this subpart, or equipment required or used solely to comply with this subpart.

Startup means the setting into operation of a glycol dehydration unit, or other affected equipment under this subpart, or equipment required or used to comply with this subpart. Startup includes initial startup and operation solely for the purpose of testing equipment.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, produced water, or other liquid, and is constructed primarily of non-earthen

materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Temperature monitoring device means an instrument used to monitor temperature and having a minimum accuracy of ±2 percent of the temperature being monitored expressed in °C, or ±2.5 °C, whichever is greater. The temperature monitoring device may measure temperature in degrees Fahrenheit or degrees Celsius, or both.

Total organic compounds or *TOC,* as used in this subpart, means those compounds which can be measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Underground storage means the subsurface facilities utilized for storing natural gas that has been transferred from its original location for the primary purpose of load balancing, which is the process of equalizing the receipt and delivery of natural gas. Processes and operations that may be located at an underground storage facility include, but are not limited to, compression and dehydration.

§ 63.1272 Startups, shutdowns, and malfunctions.

(a) The provisions set forth in this subpart shall apply at all times except during startups or shutdowns, during malfunctions, and during periods of non-operation of the affected sources (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. However, during the startup, shutdown, malfunction, or period of non-operation of one portion of an affected source, all emission points which can comply with the specific provisions to which they are subject must do so during the startup, shutdown, malfunction, or period of non-operation.

(b) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart during times when emissions are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning, or if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous startup, shutdown, or malfunction of the affected source or a portion thereof.

(c) During startups, shutdowns, and malfunctions when the requirements of this subpart do not apply pursuant to paragraphs (a) and (b) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the maximum extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction, and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

(d) The owner or operator shall prepare a startup, shutdown, or malfunction plan as required in § 63.6(e)(3) except that the plan is not required to be incorporated by reference into the source's title V permit as specified in § 63.6(e)(3)(i). Instead, the owner or operator shall keep the plan on record as required by § 63.6(e)(3)(v). The failure of the plan to adequately minimize emissions during the startup, shutdown, or malfunction does not shield an owner or operator from enforcement actions.

§ 63.1273 [Reserved]

§ 63.1274 General standards.

(a) Table 2 of this subpart specifies the provisions of subpart A (General Provisions) that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(b) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. Reports may be submitted on electronic media.

(c) Except as specified in paragraph (d) of this section, the owner or operator of an affected source (i.e., glycol dehydration unit) located at an existing or new major source of HAP emissions shall comply with the requirements in this subpart as follows:

(1) The control requirements for glycol dehydration unit process vents specified in § 63.1275;

(2) The monitoring requirements specified in § 63.1283, and

(3) The recordkeeping and reporting requirements specified in §§ 63.1284 and 63.1285.

(d) *Exemptions.* The owner or operator is exempt from the requirements of paragraph (c) of this section if the criteria listed in paragraph (d)(1) or (d)(2) of this section are met. Records of the determination of these criteria must be maintained as required in § 63.1284(d) of this subpart.

(1) The actual annual average flow of gas to the glycol dehydration unit is less than 283 thousand standard cubic meters per day, as determined by the procedures specified in § 63.1282(a)(1) of this subpart; or

(2) The actual average emissions of benzene from the glycol dehydration unit process vents to the atmosphere are less than 0.90 megagram per year as determined by the procedures specified in § 63.1282(a)(2) of this subpart.

(e) Each owner or operator of a major HAP source subject to this subpart is required to apply for a part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under part 70, the permit shall be obtained from the State authority. If a State operating permit program has not been approved, the owner or operator shall apply to the EPA Regional Office pursuant to part 71.

(f) [Reserved]

(g) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by the applicable provisions of this subpart.

§ 63.1275 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit, subject to this subpart, with an actual annual average natural gas flowrate equal to or greater than 283 thousand standard cubic meters per day and with actual average benzene glycol dehydration unit process vent emissions equal to or greater than 0.90 megagrams per year.

(b) Except as provided in paragraph (c) of this section, an owner or operator of a glycol dehydration unit process vent shall comply with the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(d).

(ii) The owner or operator shall connect the process vent to a control device or a combination of control devices through a closed-vent system and the outlet benzene emissions from the control device(s) shall be less than 0.90 megagrams per year. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(d), except that the performance requirements specified in § 63.1281(d)(1)(i) and (ii) do not apply.

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment installed to comply with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the following:

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line.

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the glycol dehydration unit process vent are reduced by 95.0 percent through process modifications or a combination of process modifications and one or more control devices, in accordance with the requirements specified in § 63.1281(e).

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraphs (c)(3)(i) through (c)(3)(ii), through the installation and operation of controls as specified in paragraph (b) (1) of this section.

(i) HAP emissions are reduced by 95.0 percent or more.

(ii) Benzene emissions are reduced to a level less than 0.90 megagrams per year.

§ 63.1276–§ 63.1280 [Reserved]

§ 63.1281 Control equipment requirements.

(a) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions as required by the provisions of this subpart. Compliance with paragraphs (c) and (d) of this section will be determined by review of the records required by § 63.1284, the reports required by § 63.1285, by review of performance test results, and by inspections.

(b) [Reserved]

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in a HAP emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) For each bypass device, except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device to the atmosphere that takes a reading at least once every 15 minutes, and that sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device used to reduce HAP emissions in accordance with the standards of this subpart shall be one of the control devices specified in paragraphs (d)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater, as determined in accordance with the requirements of § 63.1282(d);

(B) Reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.1282(d); or

(C) Operates at a minimum residence time of 0.5 second at a minimum temperature of 760 °C.

(D) If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g., carbon adsorption system or condenser) or other control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.1282(d).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) [Reserved]

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section by following the procedures specified in § 63.1282(d).

(4) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (d)(4)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the emissions unit or units through the closed-vent system to the control device, as required under § 63.1275, except when maintenance or repair of a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of

§ 63.1283(d), the owner or operator shall demonstrate compliance according to the requirements of § 63.1282(e), or (f) as applicable.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) The spent carbon removed from the carbon adsorption system shall be either regenerated, reactivated, or burned in one of the units specified in paragraphs (d)(5)(ii)(A) through (d)(5)(ii)(G) of this section.

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart X.

(B) Regenerated or reactivated in a thermal treatment unit equipped with and operating organic air emission controls in accordance with this section.

(C) Regenerated or reactivated in a thermal treatment unit equipped with and operating organic air emission controls in accordance with a national emissions standard for HAP under another subpart in 40 CFR part 61 or this part.

(D) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart O.

(E) Burned in a hazardous waste incinerator which the owner or operator has designed and operates in accordance with the requirements of 40 CFR part 265, subpart O.

(F) Burned in a boiler or industrial furnace for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 266, subpart H.

(G) Burned in a boiler or industrial furnace which the owner or operator has designed and operates in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(e) *Process modification requirements.* Each owner or operator that chooses to comply with § 63.1275(c)(2) shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The owner or operator shall determine glycol dehydration unit baseline operations (as defined in § 63.1271). Records of glycol dehydration unit baseline operations shall be retained as required under § 63.1284(b)(9).

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the percent HAP reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including, but not limited to, changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall HAP emission reduction.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(i) The owner or operator shall maintain records, as required in § 63.1284(b)(10), that the facility continues to operate in accordance with the conditions specified under paragraph (e)(2) of this section.

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) of this section, except that the emission reduction achieved shall be the emission reduction specified in paragraph (e)(2) of this section.

§ 63.1282 Test methods, compliance procedures, and compliance demonstrations.

(a) *Determination of glycol dehydration unit flowrate or benzene emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate or benzene emissions to meet the criteria for the exemption from control requirements under § 63.1274(d).

(1) The determination of actual flowrate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures natural gas flowrate to the glycol dehydration unit with an accuracy of plus or minus 2 percent or better. The owner or operator shall convert the annual natural gas flowrate to a daily average by dividing the annual flowrate by the number of days per year the glycol dehydration unit processed natural gas.

(ii) The owner or operator shall document, to the Administrator's satisfaction, that the actual annual average natural gas flowrate to the glycol dehydration unit is less than 85 thousand standard cubic meters per day.

(2) The determination of actual average benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (a)(2)(i) or (a)(2)(ii) of this section. Emissions shall be determined either uncontrolled or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be determined using the procedures documented in the Gas Research Institute (GRI) report entitled ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18 in 40 CFR part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

(b) *No detectable emissions test procedure.* (1) The procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except the instrument response factor criteria

in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid, and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a methane concentration of less than 10,000 parts per million by volume.

(5) An owner or operator may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If an owner or operator chooses to adjust the instrument readings for the background level, the background level value must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(6)(i) Except as provided in paragraph (b)(6)(i) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the facility that will meet the performance criteria specified in paragraph (b)(6)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(6)(i) of this section.

(7) An owner or operator must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (b)(7)(i) or (b)(7)(ii) of this section.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background organic concentration level, then the maximum organic concentration value measured by the detection instrument is compared directly to the applicable value for the potential leak interface as specified in paragraph (b)(8) of this section.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background organic concentration level, the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (b)(5) of this section is compared with the applicable value for the potential leak interface as specified in paragraph (b)(8) of this section.

(8) A potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (b)(7) is less than 500 parts per million by volume.

(c) [Reserved]

(d) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.1281(d)(1) or (e)(3)(ii) using either a performance test as specified in paragraph (d)(3) of this section or a design analysis as specified in paragraph (d)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (d)(5) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) The following control devices are exempt from the requirements to conduct performance tests and design analyses under this section:

(i) A flare that is designed and operated in accordance with § 63.11(b);

(ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) A boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(vi) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA, and the test was conducted using the same methods specified in this section, and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) An owner or operator shall design and operate each flare in accordance with the requirements specified in § 63.11(b) and in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(ii) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration when a flare is used.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.1281(d)(1) or (e)(3)(ii), the owner or operator shall use the test methods and procedures specified in paragraphs (d)(3)(i) through (d)(3)(iv) of this section. The performance test shall be conducted according to the schedule specified in § 63.7(a)(2), and the results of the performance test shall be submitted in the Notification of Compliance Status Report as required in § 63.1285(d)(1)(ii).

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites specified in paragraphs (d)(3)(i)(A) and (B) of this section. Any references to particulate mentioned in Methods 1 and 1A do not apply to this section.

(A) To determine compliance with the control device percent reduction requirements specified in § 63.1281(d)(1)(i)(A),(d)(1)(ii), or (e)(3)(ii), sampling sites shall be located at the inlet of the first control device and at the outlet of the final control device.

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the sampling site shall be located at the outlet of the device.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) To determine compliance with the control device percent reduction performance requirement in § 63.1281(d)(1)(i)(A), 63.1281(d)(1)(ii), or 63.1281(e)(3)(ii), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A;

alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The following procedures shall be used to calculate the percentage of reduction:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(*1*) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20°C.

(*2*) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, of 40 CFR part 60, appendix A; or Method 25A, 40 CFR part 60, appendix A, shall be summed using the equations in paragraph (d)(3)(iii)(B)(*1*) of this section.

(*3*) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equations in paragraph (d)(3)(iii)(B)(*1*) of this section.

(C) The percentage of reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100\%$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (d)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (d)(3)(iii)(B) of this section, kilograms TOC per hour or kilograms HAP per hour.

(D) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percentage of reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(iv) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A; or Method 25A, 40 CFR part 60, appendix A, to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The TOC concentration or total HAP concentration shall be calculated according to paragraph (d)(3)(iv)(B)(*1*) or (d)(3)(iv)(B)(*2*) of this section.

(*1*) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample components j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(*2*) The total HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (d)(3)(iv)(B)(*1*) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(C) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(*2*) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

C_c = TOC concentration of total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(4) For a design analysis conducted to meet the requirements of § 63.1281(d)(1) or (e)(3)(ii), the owner or operator shall meet the requirements specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.1285(d)(1)(i).

(i) The design analysis shall include analysis of the vent stream characteristics and control device

operating parameters for the applicable control device as specified in paragraphs (d)(4)(i) (A) through (F) of this section.

(A) For a thermal vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(C) For a boiler or process heater, the design analysis shall include the vent stream composition, constituent concentrations, and flowrate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(D) For a condenser, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the design analysis, an owner or operator may elect to use the procedures specified in paragraph (d)(5) of this section.

(E) For a regenerable carbon adsorption, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(F) For a nonregenerable carbon adsorption system, such as a carbon canister, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems will incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(ii) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis, then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (d)(3) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(5) As an alternative to the procedures in paragraphs (d)(3) and (d)(4)(i)(D) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions,'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to determine condenser performance.

(e) *Compliance demonstration for control devices performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.1281(d)(1) and (e)(3)(ii). Compliance shall be demonstrated using the requirements in paragraphs (e)(1) through (e)(3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.1281(d)(2)(ii) or § 63.1275(c)(2), may demonstrate compliance according to paragraph (f) of this section. An owner or operator may switch between compliance with paragraph (e) of this section and compliance with paragraph (f) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.1285(e), following the change.

(1) The owner or operator shall establish a site specific maximum or minimum monitoring parameter value (as appropriate) according to the requirements of § 63.1283(d)(5)(i).

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.1283(d)(4).

(3) Compliance is achieved when the daily average of the monitoring parameter value calculated under paragraph (e)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (e)(1) of this section.

(f) *Compliance demonstration with percent reduction performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.1281(d)(1)(ii) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to the procedures specified in § 63.1283(d)(5)(ii).

(2) Compliance with the percent reduction requirement in § 63.1281(d)(1)(ii) or § 63.1275(c)(2) shall be demonstrated by the procedures in paragraphs (f)(2)(i) through (f)(2)(iii) of this section.

(i) The owner or operator must calculate the daily average condenser outlet temperature in accordance with § 63.1283(d)(4).

(ii) The owner or operator shall determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated in paragraph (f)(2)(i) of this section and the condenser performance curve established in paragraph (f)(1) of this section.

(iii) Except as provided in paragraphs (f)(2)(iii) (A), (B), and (D) of this section, at the end of each operating day the owner or operator shall calculate the 30-day average HAP emission reduction from the condenser efficiencies determined in paragraph (f)(2)(ii) of this section for the preceding 30 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.1275(c)(2), the 30-day average HAP emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency determined in paragraph (f)(2)(ii) of this section, both for the preceding 30 operating days.

(A) After the compliance date specified in § 63.1270(f), an owner or operator of a facility that stores natural gas that has less than 30 days of data for determining the average HAP emission reduction, shall calculate the cumulative average at the end of the withdrawal season, each season, until 30 days of condenser operating data are

accumulated. For a facility that does not store natural gas, the owner or operator that has less than 30 days of data for determining average HAP emission reduction, shall calculate the cumulative average at the end of the calendar year, each year, until 30 days of condenser operating data are accumulated.

(B) After the compliance date specified in § 63.1270(f), an owner or operator that has less than 30 days of data for determining the average HAP emission reduction, compliance is achieved if the average HAP emission reduction calculated in paragraph (f)(2)(iii)(A) of this section, is equal to or greater than 95.0 percent.

(C) For the purposes of this subpart, a withdrawal season begins the first time gas is withdrawn from the storage field after July 1 of the calendar year and ends on June 30 of the next calendar year.

(D) Glycol dehydration units that are operated continuously have the option of complying with the requirements specified in 40 CFR 63.772(g).

(3) Compliance is achieved with the emission limitation specified in § 63.1281(d)(1)(ii) or § 63.1275(c)(2) if the average HAP emission reduction calculated in paragraph (f)(2)(iii) of this section is equal to or greater than 95.0 percent.

§ 63.1283 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of § 63.1275.

(b) [Reserved]

(c) *Closed-vent system inspection and monitoring requirements.* (1) For each closed-vent system required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (c)(2) through (7) of this section.

(2) Except as provided in paragraphs (c) (5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2) (i) and (ii) of this section.

(i) For each closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted or gasketed ducting flange), the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.1282(b) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; or broken or missing caps or other closure devices. The owner or operator shall monitor a component or connection using the procedures specified in § 63.1282(b) to demonstrate that it operates with no detectable emissions following any time the component or connection is repaired or replaced or the connection is unsealed.

(ii) For closed-vent system components other than those specified in paragraph (c)(2)(i) of this section, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures specified in § 63.1282(b) to demonstrate that the closed-vent system operates with no detectable emissions.

(B) Conduct annual inspections according to the procedures specified in § 63.1282(b) to demonstrate that the components or connections operate with no detectable emissions.

(C) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; or broken or missing caps or other closure devices.

(3) In the event that a leak or defect is detected, the owner or operator shall repair the leak or defect as soon as practicable, except as provided in paragraph (c)(4) of this section.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Repair shall be completed no later than 15 calendar days after the leak is detected.

(4) Delay of repair of a closed-vent system for which leaks or defects have been detected is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.1271, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next shutdown.

(5) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(5) (i) and (ii) of this section, as unsafe to inspect are exempt from the inspection requirements of paragraphs (c)(2) (i) and (ii) of this section if:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (c)(2) (i) or (ii) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(6) Any parts of the closed-vent system or cover that are designated, as described in paragraphs (c)(6) (i) and (ii) of this section, as difficult to inspect are exempt from the inspection requirements of paragraphs (c)(2) (i) and (ii) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(7) Records shall be maintained as specified in § 63.1284(b)(5) through (8).

(d) *Control device monitoring requirements.* (1) For each control device except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (9) of this section that will allow a determination to be made whether the control device is achieving the applicable performance requirements of § 63.1281(d) or (e)(3). The continuous parameter monitoring system must meet the following specifications and requirements:

(i) Each continuous parameter monitoring system shall measure data values at least once every hour and record either:

(A) Each measured data value; or

(B) Each block average value for each 1-hour period or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values.

(ii) The monitoring system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications or other written procedures that provide reasonable assurance that the monitoring equipment is operating properly.

(2) An owner or operator is exempted from the monitoring requirements specified in paragraphs (d)(3) through (9) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with the primary fuel or are used as the primary fuel;

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section.

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperatures at two locations and have a minimum accuracy of ±2 percent of the temperatures being monitored in °C, or ±2.5 °C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system:

(*1*) A continuous parameter monitoring system to measure and record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The integrating regenerating stream flow monitoring device must have an accuracy of ±10 percent; and

(*2*) A continuous parameter monitoring system to measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and to measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater.

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.1282(d)(3) or a design analysis in accordance with § 63.1282(d)(4)(i)(F) and shall be based on the total carbon working capacity of the control device and source operating schedule.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder. The monitor must meet the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60 and must be installed, calibrated, and maintained according to the manufacturer's specifications.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8(f)(1) through (5).

(4) Using the data recorded by the monitoring system, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If HAP emissions unit operation is continuous, the operating day is a 24-hour period. If the HAP emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) For each operating parameter monitored in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall comply with paragraph (d)(5)(i) of this section for all control devices, and when condensers are installed, the owner or operator shall also comply with paragraph (d)(5)(ii) of this section for condensers.

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1) or (e)(3)(ii). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1) or (e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis or control device manufacturer's recommendations or a combination of both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.1282(d)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1) or (e)(3)(ii), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and may be supplemented by the control device manufacturer's recommendations.

(ii) The owner or operator shall establish a condenser performance curve showing the relationship between condenser outlet temperature and condenser control efficiency. The curve shall be established as follows:

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.1281(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device

manufacturer's recommendations, or a combination or both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.1282(d)(4)(i)(D) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.1281(d)(1) or (e)(3)(ii), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraphs (d)(5)(ii)(A) and (B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(6) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (d)(6)(i) through (d)(6)(iv) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day, and more than one of these operating parameters meets an excursion criterion specified in paragraphs (d)(6)(i) through (d)(6)(iv) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

(i) An excursion occurs when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the operating parameter in accordance with the requirements of paragraph (d)(5)(i) of this section.

(ii) An excursion occurs when average condenser efficiency calculated according to the requirements specified in § 63.1282(f)(2)(iii) is less than 95.0 percent, as specified in § 63.1282(f)(3).

(iii) An excursion occurs when the monitoring data are not available for at least 75 percent of the operating hours.

(iv) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, an excursion occurs when:

(A) For each bypass line subject to § 63.1281(c)(3)(i)(A) the flow indicator indicates that flow has been detected and that the stream has been diverted away from the control device to the atmosphere.

(B) For each bypass line subject to § 63.1281(c)(3)(i)(B), if the seal or closure mechanism has been broken, the bypass line valve position has changed, the key for the lock-and-key type lock has been checked out, or the car-seal has broken.

(7) For each excursion, except as provided for in paragraph (d)(8) of this section, the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

(8) An excursion is not a violation of the operating parameter limit as specified in paragraphs (d)(8)(i) and (d)(8)(ii) of this section.

(i) An excursion does not count toward the number of excused excursions allowed under paragraph (d)(8)(ii) of this section when the excursion occurs during any one of the following periods:

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with the facility's startup, shutdown, and malfunction plan; or

(B) During periods of non-operation of the unit or the process that is vented to the control device (resulting in cessation of HAP emissions to which the monitoring applies).

(ii) For each control device, or combinations of control devices, installed on the same HAP emissions unit, one excused excursion is allowed per semiannual period for any reason. The initial semiannual period is the 6-month reporting period addressed by the first Periodic Report submitted by the owner or operator in accordance with § 63.1285(e) of this subpart.

(9) Nothing in paragraphs (d)(1) through (d)(8) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart.

§ 63.1284 Recordkeeping requirements.

(a) The recordkeeping provisions of subpart A of this part, that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a facility subject to this subpart shall maintain the records specified in paragraphs (b)(1) through (b)(10) of this section:

(1) The owner or operator of an affected source subject to the provisions of this subpart shall maintain files of all information (including all reports and notifications) required by this subpart. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report or period.

(i) All applicable records shall be maintained in such a manner that they can be readily accessed.

(ii) The most recent 12 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request.

(iii) The remaining 4 years of records may be retained offsite.

(iv) Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) Records specified in § 63.10(b)(2);

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.1283(d). Notwithstanding the previous sentence, monitoring data recorded during periods identified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Startup, shutdown, and malfunction events. During startup, shutdown and malfunction events, the owner or operator shall maintain records indicating whether or not the startup, shutdown, or malfunction plan, required under § 63.1272(d), was followed.

(iii) Periods of non-operation resulting in cessation of the emissions to which the monitoring applies; and

(iv) Excursions due to invalid data as defined in § 63.1283(d)(6)(iii).

(4) Each owner or operator using a control device to comply with § 63.1274 shall keep the following records up-to-date and readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.1283(d) or specified by the Administrator in accordance with § 63.1283(d)(3)(iii). For flares, the hourly records and records of pilot flame outages specified in § 63.1283(d)(3)(i)(C) shall be maintained in place of continuous records.

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.1283(d)(4) of this subpart. For flares, records of the times and duration of all periods during which all pilot flames are absent shall be kept rather than daily averages.

(iii) Hourly records of whether the flow indicator specified under § 63.1281(c)(3)(i)(A) was operating and whether flow was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the monitor is not operating.

(iv) Where a seal or closure mechanism is used to comply with § 63.1281(c)(3)(i)(B), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanism has been done, and shall record the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(5) Records identifying all parts of the closed-vent system that are designated as unsafe to inspect in accordance with § 63.1283(c)(5), an explanation of why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(6) Records identifying all parts of the closed-vent system that are designated as difficult to inspect in accordance with § 63.1283(c)(6), an explanation of why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(7) For each inspection conducted in accordance with § 63.1283(c), during which a leak or defect is detected, a record of the information specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this section.

(i) The instrument identification numbers, operator name or initials, and identification of the equipment.

(ii) The date the leak or defect was detected and the date of the first attempt to repair the leak or defect.

(iii) Maximum instrument reading measured by the method specified in § 63.1283(c)(3) after the leak or defect is successfully repaired or determined to be nonrepairable.

(iv) ''Repair delayed'' and the reason for the delay if a leak or defect is not repaired within 15 calendar days after discovery of the leak or defect.

(v) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vi) The expected date of successful repair of the leak or defect if a leak or defect is not repaired within 15 calendar days.

(vii) Dates of shutdowns that occur while the equipment is unrepaired.

(viii) The date of successful repair of the leak or defect.

(8) For each inspection conducted in accordance with § 63.1283(c) during which no leaks or defects are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks or defects were detected.

(9) Records of glycol dehydration unit baseline operations calculated as required under § 63.1281(e)(1).

(10) Records required in § 63.1281(e)(3)(i) documenting that the facility continues to operate under the conditions specified in § 63.1281(e)(2).

(c) An owner or operator that elects to comply with the benzene emission limit specified in § 63.1275(b)(1)(ii) shall document, to the Administrator's satisfaction, the following items:

(1) The method used for achieving compliance and the basis for using this compliance method; and

(2) The method used for demonstrating compliance with 0.90 megagrams per year of benzene.

(3) Any information necessary to demonstrate compliance as required in the methods specified in paragraphs (c)(1) and (c)(2) of this section.

(d) An owner or operator that is exempt from control requirements under § 63.1274(d) shall maintain the records specified in paragraph (d)(1) or (d)(2) of this section, as appropriate, for each glycol dehydration unit that is not controlled according to the requirements of § 63.1274(c).

(1) The actual annual average natural gas throughput (in terms of natural gas flowrate to the glycol dehydration unit per day), as determined in accordance with § 63.1282(a)(1); or

(2) The actual average benzene emissions (in terms of benzene emissions per year), as determined in accordance with § 63.1282(a)(2).

(e) Record the following when using a flare to comply with § 63.1281(d):

(1) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(2) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.1282(d)(2); and

(3) All periods during the compliance determination when the pilot flame is absent.

§ 63.1285 Reporting requirements.

(a) The reporting provisions of subpart A, of this part that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Each owner or operator of a facility subject to this subpart shall submit the information listed in paragraphs (b)(1) through (b)(6) of this section, except as provided in paragraph (b)(7) of this section.

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000 and plan to be area sources by June 17, 2002 shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(2) The date of the performance evaluation as specified in § 63.8(e)(2), required only if the owner or operator is requested by the Administrator to conduct a performance evaluation for a continuous monitoring system. A separate notification of the performance evaluation is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(3) The planned date of a performance test at least 60 days before the test in accordance with § 63.7(b). Unless requested by the Administrator, a site-specific test plan is not required by this subpart. If requested by the Administrator, the owner or operator must also submit the site-specific test plan required by § 63.7(c) with the notification of the performance test. A separate notification of the performance test is not required if it is included in the initial notification submitted in accordance with paragraph (b)(1) of this section.

(4) A Notification of Compliance Status Report as described in paragraph (d) of this section;

(5) Periodic Reports as described in paragraph (e) of this section; and

(6) Startup, shutdown, and malfunction reports, as specified in § 63.10(d)(5), shall be submitted as required. Separate startup, shutdown, or malfunction reports as described in § 63.10(d)(5)(i) are not required if the information is included in the Periodic Report specified in paragraph (e) of this section.

(7) Each owner or operator of a glycol dehydration unit subject to this subpart that is exempt from the control

requirements for glycol dehydration unit process vents in § 63.1275, is exempt from all reporting requirements for major sources in this subpart for that unit.

(c) [Reserved]

(d) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status Report as required under § 63.9(h) within 180 days after the compliance date specified in § 63.1270(d). In addition to the information required under § 63.9(h), the Notification of Compliance Status Report shall include the information specified in paragraphs (d)(1) through (d)(10) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If all of the information required under this paragraph have been submitted at any time prior to 180 days after the applicable compliance dates specified in § 63.1270(d), a separate Notification of Compliance Status Report is not required. If an owner or operator submits the information specified in paragraphs (d)(1) through (d)(9) of this section at different times, and/or different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information.

(1) If a closed-vent system and a control device other than a flare are used to comply with § 63.1274, the owner or operator shall submit:

(i) The design analysis documentation specified in § 63.1282(d)(4) of this subpart if the owner or operator elects to prepare a design analysis; or

(ii) If the owner or operator elects to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.1282(d)(3), and that the test conditions are representative of current operating conditions.

(A) The percent reduction of HAP or TOC, or the outlet concentration of HAP or TOC (parts per million by volume on a dry basis), determined as specified in § 63.1282(d)(3) of this subpart; and

(B) The value of the monitored parameters specified in § 63.1283(d) of this subpart, or a site-specific parameter approved by the permitting agency, averaged over the full period of the performance test.

(2) If a closed-vent system and a flare are used to comply with § 63.1274, the owner or operator shall submit performance test results including the information in paragraphs (d)(2)(i) and (ii) of this section.

(i) All visible emission readings, heat content determinations, flowrate measurements, and exit velocity determinations made during the compliance determination required by § 63.1282(d)(2) of this subpart, and

(ii) A statement of whether a flame was present at the pilot light over the full period of the compliance determination.

(3) The owner or operator shall submit one complete test report for each test method used for a particular source.

(i) For additional tests performed using the same test method, the results specified in paragraph (d)(1)(ii) of this section shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(4) For each control device other than a flare used to meet the requirements of § 63.1274, the owner or operator shall submit the information specified in paragraphs (d)(4)(i) through (iii) of this section for each operating parameter required to be monitored in accordance with the requirements of § 63.1283(d).

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1) or (e)(3)(ii).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.1283(d)(5) of this subpart. This explanation shall include any data and calculations used to develop the value, and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.1281(d)(1) or (e)(3)(ii).

(iii) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(5) Results of any continuous monitoring system performance evaluations shall be included in the Notification of Compliance Status Report.

(6) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this subpart. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this subpart, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in this subpart.

(7) The owner or operator that elects to comply with the requirements of § 63.1275(b)(1)(ii) shall submit the records required under § 63.1284(c).

(8) The owner or operator shall submit an analysis demonstrating whether an affected source is a major source using the maximum throughput calculated according to § 63.1270(a).

(9) The owner or operator shall submit a statement as to whether the source has complied with the requirements of this subpart.

(10) The owner or operator shall submit the analysis prepared under § 63.1281(e)(2) to demonstrate that the conditions by which the facility will be operated to achieve an overall HAP emission reduction of 95.0 percent through process modifications or a combination of process modifications and one or more control devices.

(e) *Periodic Reports.* An owner or operator shall prepare Periodic Reports in accordance with paragraphs (e)(1) and (2) of this section and submit them to the Administrator.

(1) An owner or operator shall submit Periodic Reports semiannually, beginning 60 operating days after the end of the applicable reporting period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status Report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status Report is due.

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (viii) of this section, as applicable.

(i) The information required under § 63.10(e)(3). For the purposes of this

subpart and the information required under § 63.10(e)(3), excursions (as defined in § 63.1283(d)(6)) shall be considered excess emissions.

(ii) A description of all excursions as defined in § 63.1283(d)(6) of this subpart that have occurred during the 6-month reporting period.

(A) For each excursion caused when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit), as specified in § 63.1283(d)(6)(i), the report must include the daily average values of the monitored parameter, the applicable operating parameter limit, and the date and duration of the period that the excursion occurred.

(B) For each excursion caused when the 30-day average condenser control efficiency is less than 95.0 percent, as specified in § 63.1283(d)(6)(ii), the report must include the 30-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(C) For each excursion caused by lack of monitoring data, as specified in § 63.1283(d)(6)(iii), the report must include the date and duration of period when the monitoring data were not collected and the reason why the data were not collected.

(iii) For each inspection conducted in accordance with § 63.1283(c) during which a leak or defect is detected, the records specified in § 63.1284(b)(7) must be included in the next Periodic Report.

(iv) For each closed-vent system with a bypass line subject to § 63.1281(c)(3)(i)(A), records required under § 63.1284(b)(4)(iii) of all periods when the vent stream is diverted from the control device through a bypass line. For each closed-vent system with a bypass line subject to § 63.1281(c)(3)(i)(B), records required under § 63.1284(b)(4)(iv) of all periods in which the seal or closure mechanism is broken, the bypass valve position has changed, or the key to unlock the bypass line valve was checked out.

(v) If an owner or operator elects to comply with § 63.1275(b)(1)(ii), the records required under § 63.1284(c)(3).

(vi) The information in paragraphs (e)(2)(vi)(A) and (B) of this section shall be stated in the Periodic Report, when applicable.

(A) No excursions.

(B) No continuous monitoring system has been inoperative, out of control, repaired, or adjusted.

(vii) Any change in compliance methods as specified in § 63.1275(b).

(viii) If the owner or operator elects to comply with § 63.1275(c)(2), the records required under § 63.1284(b)(10).

(f) *Notification of process change.* Whenever a process change is made, or a change in any of the information submitted in the Notification of Compliance Status Report, the owner or operator shall submit a report within 180 days after the process change is made or as a part of the next Periodic Report as required under paragraph (e) of this section, whichever is sooner. The report shall include:

(1) A brief description of the process change;

(2) A description of any modification to standard procedures or quality assurance procedures;

(3) Revisions to any of the information reported in the original Notification of Compliance Status Report under paragraph (d) of this section; and

(4) Information required by the Notification of Compliance Status Report under paragraph (d) of this section for changes involving the addition of processes or equipment.

§ 63.1286 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities will not be delegated to States for §§ 63.1282 and 63.1287 of this subpart.

§ 63.1287 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.1274 through 63.1281, the Administrator will publish a notice in the **Federal Register** permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that this means achieves equivalent emission reductions.

§ 63.1288 [Reserved]

§ 63.1289 [Reserved]

Appendix to Subpart HHH—Tables

TABLE 1.—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART HHH

CAS Number [a]	Chemical name
75070 ...	Acetaldehyde
71432 ...	Benzene (includes benzene in gasoline)
75150 ...	Carbon disulfide
463581	Carbonyl sulfide
100414	Ethyl benzene
107211	Ethylene glycol
75050 ...	Acetaldehyde
50000 ...	Formaldehyde
110543	n-Hexane
91203 ...	Naphthalene
108883	Toluene
540841	2,2,4-Trimethylpentane
1330207	Xylenes (isomers and mixture)
95476 ...	o-Xylene
108383	m-Xylene
106423	p-Xylene

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 TO SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.1(a)(1)	Yes	
§ 63.1(a)(2)	Yes	
§ 63.1(a)(3)	Yes	
§ 63.1(a)(4)	Yes	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6) through (a)(8)	Yes	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes	

TABLE 2 TO SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§63.1(a)(11)	Yes	
§63.1(a)(12) through (a)(14)	Yes	
§63.1(b)(1)	No	Subpart HHH specifies applicability.
§63.1(b)(2)	Yes	
§63.1(b)(3)	No.	
§63.1(c)(1)	No	Subpart HHH specifies applicability.
§63.1(c)(2)	No	
§63.1(c)(3)	No	Section reserved.
§63.1(c)(4)	Yes	
§63.1(c)(5)	Yes	
§63.1(d)	No	Section reserved.
§63.1(e)	Yes	
§63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HHH.
§63.3(a) through (c)	Yes	
§63.4(a)(1) through (a)(3)	Yes	
§63.4(a)(4)	No	Section reserved.
§63.4(a)(5)	Yes	
§63.4(b)	Yes	
§63.4(c)	Yes	
§63.5(a)(1)	Yes	
§63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§63.5(b)(1)	Yes	
§63.5(b)(2)	No	Section reserved.
§63.5(b)(3)	Yes	
§63.5(b)(4)	Yes	
§63.5(b)(5)	Yes	
§63.5(b)(6)	Yes	
§63.5(c)	No	Section reserved.
§63.5(d)(1)	Yes	
§63.5(d)(2)	Yes	
§63.5(d)(3)	Yes	
§63.5(d)(4)	Yes	
§63.5(e)	Yes	
§63.5(f)(1)	Yes	
§63.5(f)(2)	Yes	
§63.6(a)	Yes	
§63.6(b)(1)	Yes	
§63.6(b)(2)	Yes	
§63.6(b)(3)	Yes	
§63.6(b)(4)	Yes	
§63.6(b)(5)	Yes	
§63.6(b)(6)	No	Section reserved.
§63.6(b)(7)	Yes	
§63.6(c)(1)	Yes	
§63.6(c)(2)	Yes	
§63.6(c)(3) and (c)(4)	No	Section reserved.
§63.6(c)(5)	Yes	
§63.6(d)	No	Section reserved.
§63.6(e)	Yes	
§63.6(e)	Yes	Except as otherwise specified.
§63.6(e)(1)(i)	No	Addressed in §63.1272.
§63.6(e)(1)(ii)	Yes	
§63.6(e)(1)(iii)	Yes	
§63.6(e)(2)	Yes	
§63.6(e)(3)(i)	Yes	Except as otherwise specified.
§63.6(e)(3)(i)(A)	No	Addressed by §63.1272(c).
§63.6(e)(3)(i)(B)	Yes	
§63.6(e)(3)(i)(C)	Yes	
§63.6(e)(3)(ii) through (3)(vi)	Yes	
§63.6(e)(3)(vii).		
§63.6(e)(3)(vii) (A)	Yes	
§63.6(e)(3)(vii) (B)	Yes	Except that the plan must provide for operation in compliance with §63.1272(c).
§63.6(e)(3)(vii) (C)	Yes	
§63.6(e)3)(viii)	Yes	
§63.7(e)(1)	Yes	
§63.7(e)(2)	Yes	
§63.7(e)(3)	Yes	
§63.7(e)(4)	Yes	
§63.7(f)	Yes	
§63.7(g)	Yes	
§63.7(h)	Yes	
§63.8(a)(1)	Yes	
§63.8(a)(2)	Yes	
§63.8(a)(3)	No	Section reserved.
§63.8(a)(4)	Yes	
§63.8(b)(1)	Yes	
§63.8(b)(2)	Yes	
§63.8(b)(3)	Yes	

TABLE 2 TO SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.8(c)(1)	Yes	
§ 63.8(c)(2)	Yes	
§ 63.8(c)(3)	Yes	
§ 63.8(c)(4)	No.	
§ 63.8(c)(5) through (c)(8)	Yes	
§ 63.8(d)	Yes	
§ 63.8(e)	Yes	Subpart HHH does not specifically require continuous emissions monitor performance evaluations, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes	
§ 63.8(f)(6)	No	Subpart HHH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HHH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes	
§ 63.9(b)(1)	Yes	
§ 63.9(b)(2)	Yes	Sources are given 1 year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes	
§ 63.9(b)(4)	Yes	
§ 63.9(b)(5)	Yes	
§ 63.9(c)	Yes	
§ 63.9(d)	Yes	
§ 63.9(e)	Yes	
§ 63.9(f)	No.	
§ 63.9(g)	Yes	
§ 63.9(h)(1) through (h)(3)	Yes	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) and (h)(6)	Yes	
§ 63.9(i)	Yes	
§ 63.9(j)	Yes	
§ 63.10(a)	Yes	
§ 63.10(b)(1)	Yes	
§ 63.10(b)(2)	Yes	
§ 63.10(b)(3)	No	
§ 63.10(c)(1)	Yes	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) through (c)(8)	Yes	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (c)(15)	Yes	
§ 63.10(d)(1)	Yes	
§ 63.10(d)(2)	Yes	
§ 63.10(d)(3)	Yes	
§ 63.10(d)(4)	Yes	
§ 63.10(d)(5)	Yes	Subpart HHH requires major sources to submit a startup, shutdown and malfunction report semi-annually.
§ 63.10(e)(1)	Yes	
§ 63.10(e)(2)	Yes	
§ 63.10(e)(3)(i)	Yes	Subpart HHH requires major sources to submit Periodic Reports semi-annually.
§ 63.10(e)(3)(i)(A)	Yes	
§ 63.10(e)(3)(i)(B)	Yes	
§ 63.10(e)(3)(i)(C)	No	Subpart HHH does not require quarterly reporting for excess emissions.
§ 63.10(e)(3)(ii) through (e)(3)(viii)	Yes	
§ 63.10(f)	Yes	
§ 63.11(a) and (b)	Yes	
§ 63.12(a) through (c)	Yes	
§ 63.13(a) through (c)	Yes	
§ 63.14(a) and (b)	Yes	
§ 63.15(a) and (b)	Yes	

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Federal Register

Thursday
June 17, 1999

Part III

Department of Agriculture

Agricultural Marketing Service

Grading Standards; Oranges (California and Arizona); Grapefruit (California and Arizona); Tangerines; and Lemons; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–98–305]

United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to change the United States Standards for Grades of Oranges, United States Standards for Grades of Grapefruit, United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons. Specifically, AMS is proposing to change the standards in order to provide a minimum 25-count sample to be applied to tolerances for defects. These changes are being requested by industry to promote greater uniformity and consistency in the standards. In addition, AMS proposes to further improve the standards and promote consistency by reviewing the standards in their entirety. These standards have not been changed within the last 34 to 50 years, depending on the commodity in question. Revisions are needed to bring them into conformity with current cultural and marketing practices.

DATES: Comments must be submitted on or before August 16, 1999.

ADDRESSES: Written comments may be submitted to Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2065, South Building, STOP 0240, PO Box 96456, Washington, DC 20090–6456; faxed to (202) 720–8871; or e-mailed to fpb.docketclerk@usda.gov.

Comments should reference the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above address during regular business hours.

The current U.S. grade standards for these citrus crops, along with proposed changes, are available either through the above addresses or by accessing AMS's Home Page on the Internet at www.ams.usda.gov/standards/frutmrkt.htm.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan at (202) 720–2185.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *''. AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and make copies of official standards available upon request. The United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons no longer appear in the Code of Federal Regulations but are maintained by USDA.

AMS is proposing to change the United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons using the procedures it published in the August 13, 1997, **Federal Register** and that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

AMS received a request from Sunkist Growers to change the standards to allow for a minimum 25-count sample. In addition, AMS has recommended other changes to bring the standards into conformity with current cultural and marketing practices. This notice provides for a 60 day comment period which affords sufficient time for interested persons to comment on the revisions to the standards. The following is an outline of these changes.

Current standard	Proposed	Discussion
United States Standards for Grades of Oranges (California and Arizona)		
''U.S. Fancy'' consists of oranges of similar varietal characteristics which are mature, well colored, firm, well formed, of smooth texture, and which are free from decay, broken skins which are not healed, hard or dry skins,	No change.	N/A.
exanthema, growth cracks, bruises (except those incident to proper handling and packing), dryness or mushy condition, and free from injury caused by split, rough, wide or protruding navels, creasing, scars, oil spots, scale,	exanthema, growth cracks, dryness or mushy condition, and free from injury caused by bruises, split, rough, wide or protruding navels, creasing, scars, oil spots, scale	We propose to change the phrase ''free from bruises'' to ''free from injury by bruises'' to standardize with other fruit and vegetable standards. Typically, bruising is defined under the definitions for injury, damage, and serious damage. The definitions for injury and damage are the same in this standard, therefore, when bruising occurs it will be considered as damage.
sunburn, dirt or other foreign material, disease, insects or mechanical or other means. (See ''Tolerances'')	skin breakdown, sunburn, dirt or other foreign material disease, insects or mechanical or other means. (See ''Tolerances'')	We propose to add ''free from injury caused by skin breakdown.'' This defect is currently being scored based on the ''general definition'' and is not specified in the current standards.
''U.S. No. 1'' consists of oranges of similar varietal characteristics which are mature, firm, well formed, of fairly smooth texture, and which are free from decay, broken skins which are not healed, hard or dry skins,	No change.	N/A.

Current standard	Proposed	Discussion
exanthema, growth cracks, bruises (except those incident to proper handling and packing), and free from damage caused by dryness or mushy condition, split, rough, wide or protruding navels, creasing, scars, oil spots, scale,	exanthema, growth cracks, and free from damage caused by bruises, dryness or mushy condition, split, rough, wide or protruding navels, creasing, scars, oil spots, scale,	We propose to change the phrase ''free from bruises'' to ''free from damage by bruises'' to standardize with other fruit and vegetable standards. Typically, bruising is defined under the definitions for injury, damage, and serious damage. The definitions for injury and damage are the same in this standard, therefore, when bruising occurs it will be considered as damage.
sunburn, dirt or other foreign material, disease, insects or mechanical or other means.	skin breakdown, sunburn, dirt or other foreign material, disease, insects or mechanical or other means.	We propose to add ''free from damage caused by skin breakdown.'' This defect is currently being scored based on the ''general definition'' and is not specified in the current standards.
Each fruit shall be well colored except Valencia oranges which shall be at least fairly well colored:	No change.	N/A.
Provided, That navel oranges in any lot which is destined for export and which is certified as meeting the standards for export need be only fairly well colored. (See ''Tolerances'')	No change.	N/A.
''U.S. Combination'' consists of a combination of U.S. No. 1 and U.S. No. 2 oranges: Provided, That at least 40 percent, by count, of the oranges in each container meet the requirements of U.S. No. 1 grade. (See ''Tolerances'')	''U.S. Combination'' consists of a combination of U.S. No. 1 and U.S. No. 2 oranges: Provided, That at least 40 percent, by count, of the oranges in each lot shall meet the requirements of the U.S. No. 1 grade. (See ''Tolerances'')	We propose to change the word ''container'' to ''lot'' to remain consistent with the proposed sampling method. For tolerances on individual samples please refer to the ''Tolerances'' section on page 7.
''U.S. No. 2'' consists of oranges of similar varietal characteristics which are mature, fairly well colored, fairly firm, fairly well formed, which may be of slightly rough texture, and which are free from decay, broken skins which are not healed, hard or dry skins, exanthema, growth cracks, and free from serious damage caused by bruises, dryness or mushy condition, split or protruding navels, creasing, scars, oil spots, scale,	No change.	N/A.
sunburn, dirt or other foreign material, disease, insects or mechanical or other means. (See ''Tolerances'')	skin breakdown, sunburn, dirt or other foreign material, disease, insects or mechanical or other means. (See ''Tolerances'')	We propose to add ''free from serious damage caused by skin breakdown.'' This defect is currently being scored based on the ''general definition'' and is not specified in the current standards.
''Unclassified'' consists of oranges which have not been classified in accordance with any of the foregoing grades. The term ''unclassified'' is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.	Delete.	When changing or updating standards in recent years, references to ''Unclassified'' have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that ''Unclassified'' is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated.
''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. Combination grades are provided as specified.	''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances, by count, based on a minimum 25 count sample, set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. Combination grades are provided as specified.	The proposed addition of the phrase ''a minimum 25 count sample'' establishes a basis for sampling uniformity. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change is also consistent with the industry's request.

Current standard	Proposed	Discussion
''U.S. Fancy, U.S. No. 1, and U.S. No. 2 grades.'' Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination.	''U.S. Fancy and U.S. No. 1 grades.'' For defects at shipping point. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 5 percent shall be allowed for defects causing serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate ''Shipping Point'' tolerances to be more consistent with other fruit and vegetable standards. A tolerance for serious damage and a ''whole number'' decay tolerance are proposed. Separate tolerances for serious damage and the whole number decay tolerance at shipping point are included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of ''not more than one-twentieth of (10%), or one-half of 1 percent'' may be a confusing concept to an industry which is accustomed to ''whole'' percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors ''round up'' percentages ending in .5 or more and ''round down'' those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards.
	''U.S. Fancy and U.S. No. 1 grades.'' For defects en route or at destination. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing serious damage, including therein not more than 5 percent for serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
	''U.S. No. 2 grade.'' For defects at shipping point. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 1 percent for decay.	We propose to establish separate tolerances at ''Shipping Point'' and ''En Route or At Destination'' to be more consistent with other fruit and vegetable standards. Also proposed is a 1 percent decay tolerance at shipping point. The decay tolerance en route or at destination would remain at 3 percent.
	''U.S. No. 2 grades.'' For defects en route or at destination. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.

Current standard	Proposed	Discussion
''U.S. Combination grade.'' Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of 3 percent, shall be allowed for decay en route or at destination.	''U.S. Combination grade.'' For defects at shipping point. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 1 percent for decay.	We propose to establish separate ''Shipping Point'' tolerances to be more consistent with other fruit and vegetable standards. A tolerance for serious damage and a ''whole number'' decay tolerance are proposed. Separate tolerances for serious damage and the whole number decay tolerance at shipping point are included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of ''not more than one-twentieth of (10%), or one-half of 1 percent'' may be a confusing concept to an industry which is accustomed to ''whole'' percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors ''round up'' percentages ending in .5 or more and ''round down'' those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards.
	''U.S. Combination grade.'' For defects en route or at destination. Not more than 10 percent, by count, of the oranges in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 12 percent, by count, of the oranges in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
(a) No part of any tolerance shall be allowed to reduce for the lot as a whole the percentage of U.S. No. 1 required in the combination, but individual containers may have not more than a total of 10 percent less than percentage of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	''U.S. Combination grade.'' For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 oranges required in the U.S. Combination grade, but individual samples may have not less than 30 percent of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination. We also propose to re-word this section to make it consistent with other fruit and vegetable standards including those listed in this Notice.
''Application of tolerances.'' (a) Except when applying the tolerances for standards for export, the contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: Provided, That the averages for the entire lot are within the tolerances specified for the grade:	''Application of tolerances.'' Individual samples, based on a minimum 25 count, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose to change the standards to include minimum 25 count samples, not ''packages.'' This is consistent with the recently-changed Florida Citrus Standards. Individual sample tolerances are also proposed to reflect the language and tolerances widely used in other fruit and vegetable standards.
(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed orange may be permitted in any package.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.

Current standard	Proposed	Discussion
(2) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects: Provided, That not more than one orange which is seriously damaged by dryness or mushy condition may be permitted in any package and, in addition, en route or at destination not more than 10 percent of the packages may have more than one decayed orange.	Delete.	We propose this deletion because the reference to various size package restrictions listed in the current standard would no longer be valid with a minimum 25 count sample.
''Standard pack.'' (a) Oranges shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.	''Standard pack.'' (a) Oranges shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods.	We propose to delete the reference to ''wrapped fruit'' because the industry no longer packs fruit in this manner.
(b) All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When oranges are packed in standard nailed boxes, each box shall have a minimum bulge of 1¼ inches; when packed in cartons or in wire-bound boxes, each container shall be at least level full at time of packing.	(b) All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When oranges are packed in cartons or in wire-bound boxes, each container shall be at least level full at time of packing.	We propose to delete the reference to ''nailed boxes'' because they are no longer used by the industry.
(c) ''Fairly uniform in size'' means that when oranges are packed for 113 carton count or smaller size, or equivalent sizes when packed in other containers, not more than 10 percent, by count, of the oranges in any container may vary more than five-sixteenths inch in diameter; when packed for sizes larger than 113 carton count or equivalent sizes packed in other containers, not more than 10 percent, by count, of the oranges in any container may vary more than seven-sixteenths inch in diameter.	(c) ''Fairly uniform in size'' means that when oranges are packed for 113 carton count or smaller size, or equivalent sizes when packed in other containers, not more than 10 percent, by count, of the oranges in any sample may vary more than five-sixteenths inch in diameter; when packed for sizes larger than 113 carton count or equivalent sizes packed in other containers, not more than 10 percent, by count, of the oranges in any sample may vary more than seven-sixteenths inch in diameter.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
(1) ''Diameter'' means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.	No change.	N/A.
(d) In order to allow for variations incident to proper packing, when oranges are wrapped not more than 10 percent of the wrapped fruit in any container may fail to meet the requirements pertaining to wrapping; and, not more than 5 percent of the containers in any lot may fail to meet the requirements for standard pack.	(d) In order to allow for variations incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements for standard pack.	We propose to delete the reference to ''wrapped fruit'' because industry no longer packs fruit in this manner; and to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method.
''Standard sizing and fill.'' (a) Boxes or cartons in which oranges are not packed according to a definite pattern do not meet the requirements of standard pack, but may be certified as meeting the requirements of standard sizing and fill: Provided, That the oranges in the containers are fairly uniform in size as defined in the standard pack section: And provided further, That the contents have been properly shaken down and the container is at least level full at time of packing.	''Standard sizing and fill.'' (a) Boxes or cartons in which oranges are not packed according to a definite pattern do not meet the requirements of standard pack, but may be certified as meeting the requirements of standard sizing and fill: Provided, That the oranges in the samples are fairly uniform in size as defined in the standard pack section: And provided further, That the contents have been properly shaken down and the container is at least level full at time of packing.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method.
(b) In order to allow for variations incident to proper packing, not more than 5 percent of the containers in any lot may fail to meet the requirements of standard sizing and fill.	(b) In order to allow for variations incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements of standard sizing and fill.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method.
''Standards for export.'' (a) Not more than a total of 10 percent, by count, of the oranges in any container may be soft, affected by decay, have broken skins, which are not healed, growth cracks, or be damaged by creasing or skin breakdown, or seriously damaged by split or protruding navels, or by dryness or mushy condition, except that:	''Standards for export.'' (a) Not more than a total of 10 percent, by count, of the oranges in any sample may be soft, affected by decay, have broken skins, which are not healed, growth cracks, or be damaged by creasing or skin breakdown, or seriously damaged by split or protruding navels, or by dryness or mushy condition, except that:	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method.

Current standard	Proposed	Discussion
(1) Not more than one-half of 1 percent shall be allowed for oranges affected by decay;	No change.	N/A.
(2) Not more than 3 percent shall have broken skins which are not healed;	No change.	N/A.
(3) Not more than 3 percent shall have growth cracks;	No change.	N/A.
(4) Not more than 5 percent shall be soft;	No change.	N/A.
(5) Not more than 5 percent shall be damaged by creasing;	No change.	N/A.
(6) Not more than 5 percent shall be seriously damaged by split or protruding navels;	No change.	N/A.
(7) Not more than 5 percent shall be seriously damaged by dryness or mushy condition; and,	No change.	N/A.
(8) Not more than 5 percent shall be damaged by skin breakdown.	No change.	N/A.
(b) Any lot of oranges shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have not more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the oranges in any container has any of the defects enumerated in the standards for export.	(b) Any lot of oranges shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have not more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the oranges in any sample has any of the defects enumerated in the standards for export.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method.
''Similar varietal characteristics'' means that the oranges in any container are similar in color and type.	No change.	N/A.
''Well colored'' means that the fruit is at least light orange in color, with not more than a trace of green at the stem end, and not more than 15 percent of the remainder of the surface of the fruit shows green color.	No change.	N/A.
''Firm'' means that the fruit does not yield more than slightly to moderate pressure.	No change.	N/A.
''Well formed'' means that fruit shows the normal shape characteristic of the variety.	No change.	N/A.
''Smooth texture'' means that the skin is of fairly fine grain for the variety, the ''pebbling'' is not pronounced, and any furrows radiating from the stem end are shallow.	No change.	N/A.
''Injury'' means any defect which more than slightly affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:	No change.	N/A.
(a) Split, rough, wide or protruding navels when a split is unhealed or is more than one-eighth inch in length; or when the navel protrudes beyond the general contour of the fruit; or when flush with the contour but with the opening so wide, considering the size of the fruit, or the navel growth so folded and ridged that it detracts noticeably from the appearance of the fruit;	No change.	N/A.
(b) Slight creasing which is more than barely visible, or which extends over more than 20 percent of the fruit surface;	No change.	N/A.
(c) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.
(1) Scars which are very dark and which have an aggregate area exceeding that of a circle one-eighth inch in diameter;	No change.	N/A.
(2) Scars which are dark, rough or deep and which have an aggregate area exceeding that of a circle one-fourth inch in diameter;	No change.	N/A.

Current standard	Proposed	Discussion
(3) Scars which are fairly light in color, slightly rough, or with slight depth and which have an aggregate area exceeding that of a circle one-half inch in diameter; and,	No change.	N/A.
(4) Scars which are light in color, fairly smooth, with no depth and which have an aggregate area of more than 5 percent of the fruit surface;	No change.	N/A.
(d) Oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of more than 2½ percent of the fruit surface, or which are green and more than 4 in number;	No change.	N/A.
(e) Scale when medium or large and more than 5 are present; and,	No change.	N/A.
(f) Sunburn which appreciably changes the normal color or shape of the fruit, or which affects more than 10 percent of the fruit surface.	No change.	N/A.
	(g) Skin breakdown when exceeding that of a circle ⅛ inch in diameter.	This defect is currently being scored using the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(h) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored using the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
''Fairly smooth texture'' means that the skin does not feel noticeably rough or coarse for the variety. The size of the fruit should be considered in judging texture, as large fruit is not usually as smooth as smaller fruit. It is common for the fruit to show larger and coarser ''pebbling'' on the stem end portion than on the blossom end. The presence of furrows or grooves on the stem end portion of the fruit is a common condition in certain varieties, and the fruit shall not be considered as slightly rough unless the furrows or grooves are of sufficient depth, length, and number as to materially affect the appearance and smoothness of the orange.	No change.	N/A.
''Damage'' means any defect which materially affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:	No change.	N/A.
(a) Dryness or mushy condition when affecting all segments more than one-fourth inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.
(b) Split, rough, wide or protruding navels when there are more than three splits, or when any split is unhealed or is more than one-fourth inch in length; or navels which flare, bulge, or protrude materially beyond the general contour of the fruit; or when the navel opening is so wide, considering the size of the fruit, or the navel growth so folded and ridged that it detracts materially from the appearance of the fruit;	No change.	N/A.
(c) Creasing which materially weakens the skin, or which extends over more than one-third of the fruit surface;	No change.	N/A.
(d) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.

Current standard	Proposed	Discussion
(1) Scars which are very dark, with slight depth, and which have an aggregate area exceeding that of a circle one-fourth inch in diameter;	No change.	N/A.
(2) Scars which are very dark, with no depth, and which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
(3) Scars which are dark, and rough or deep, and which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
(4) Scars which are dark, and slightly rough or with slight depth, and which have an aggregate area exceeding that of a circle three-fourths inch in diameter;	No change.	N/A.
(5) Scars which are fairly light in color, slightly rough or with slight depth, and which have an aggregate area of more than 5 percent of the fruit surface; and,	No change.	N/A.
(6) Scars which are light in color, fairly smooth, with no depth, and which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(e) Oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of more than 5 percent of the fruit surface, or which are green and more than 7 in number;	No change.	N/A.
(f) Scale when medium or large and more than 3 scales are present in each of 3 circular areas 1 inch in diameter, selected as the worst infested areas, or when more than 7 scales are present in one of these areas: Provided, That scale within a circle five-eighths inch in diameter centered at the stem button or button socket shall not be considered in determining whether an orange is damaged; and;	(f) Scale when medium or large and more than 7 are present, or when medium or large scale, outside the stem button area, aggregate more than a circle 5/8 inch in diameter.	We propose to change the scoring criteria of this defect to simplify the scoring of scale and provide uniformity with other citrus standards.
(g) Sunburn which causes appreciable flattening of the fruit, drying or darkening of the skin, or affects more than 25 percent of the fruit surface.	No change.	N/A.
	(h) Skin breakdown when exceeding that of a circle ¼ inch in diameter.	This defect is currently being scored using the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(i) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored using the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
''Fairly well colored'' means that the yellow or orange color predominates on the fruit.	No change.	N/A.
''Fairly firm'' means that the fruit may yield to moderate pressure but is not soft.	No change.	N/A.
''Fairly well formed'' means that the fruit is not of the shape characteristic of the variety but is not decidedly flattened, pointed, extremely elongated, or otherwise badly deformed.	No change.	N/A.
Slightly rough texture'' means that the skin is not decidedly rough, badly folded, badly ridged, or decidedly lumpy. Heavily ''pebbled'' skin shall be considered as slightly rough.	No change.	N/A.
''Serious damage'' means any defect which seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:	No change.	N/A.
(a) Dryness or mushy condition when affecting all segments more than one-half inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.

Current standard	Proposed	Discussion
(b) Split or protruding navels when any split is unhealed or is more than one-half inch in length, or when two or more splits aggregate more than 1 inch in length; or navels which protrude seriously beyond the general contour of the fruit; or when the navel opening is so wide, considering the size of the fruit, or the navel growth so badly folded and ridged that it detracts seriously from the appearance of the fruit;	No change.	N/A.
(c) Creasing which seriously weakens the skin, or which is distributed over practically the entire fruit surface;	No change.	N/A.
(d) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.
(1) Scar which are very dark, very rough or very deep, and which have an aggregate area of more than 5 percent of the fruit surface;	No change.	N/A.
(2) Scars which are dark, rough or deep, and which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(3) Scars which are fairly light in color, slightly rough or of slight depth and which have an aggregate area of more than 15 percent of the fruit surface; and,	No change.	N/A.
(4) Scars which are light in color, fairly smooth, with no depth, and which have an aggregate area of more than 25 percent of the fruit surface;	No change.	N/A.
(e) Oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(f) Scale when medium or large and more than 9 scales are present in each of 3 circular areas 1 inch in diameter, selected as the worst infested areas, or if more than 19 scales are present in one of these areas: Provided, That scale within a circle five-eighths inch in diameter centered at the stem button or button socket shall not be considered in determining whether an orange is seriously damaged; and,	(f) Scale when medium or large and when aggregating more than a circle ¾ inch in diameter.	We propose to change the scoring criteria of this defect to simplify the scoring of scale and provide uniformity with other citrus standards.
(g) Sunburn which causes decided flattening of the fruit, drying or dark discoloration of the skin, or which affects more than one-third of the fruit surface.	No change.	N/A.
	(h) Skin breakdown when exceeding that of a circle ⅝ inch in diameter.	This defect is currently being scored using the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(i) Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo and juice sacs are ruptured causing a mushy condition affecting all segments more than ¾ inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	This defect is currently being scored using the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.

Current standard	Proposed	Discussion
	Note: All references in this standard to area, aggregating area, or length are based on an orange 2⅞ inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	Currently, the standard does not state whether defects are based on a specific size fruit; or if greater defective areas are allowed on larger fruit and lesser areas on smaller fruit. Many fruit and vegetable standards contain this distinction. To clarify the issue and to standardize with other fruit and vegetable standards, we propose to include this statement.
United States Standards for Grades of Grapefruit (California and Arizona)		
''U.S. Fancy'' shall consist of grapefruit of similar varietal characteristics which are mature, well colored, firm, well formed, of smooth texture for the variety, and fairly thin skinned; free from decay, broken skins which are not healed, hard or	No change.	N/A.
dry skins, bruises (except those incident to proper handling and packing), dryness or mushy condition, and from injury caused by sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn,	dry skins, dryness or mushy condition, and free from injury caused by bruises, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn,	We propose to change the phrase ''free from bruises'' to ''free from injury by bruises'' to be more consistent with other fruit and vegetable standards. Typically, bruising is defined under the definitions of injury, damage and serious damage. As proposed, when bruising is encountered in the U.S. Fancy grade, it will be considered injury.
sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. Stems shall be properly clipped. (See ''Tolerances'')	oil spots, skin breakdown, sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See ''Tolerances'')	We propose to add ''free from injury by'' to the defects skin breakdown and oil spots to be more consistent with other fruit and vegetable standards. These defects are currently scored based on the ''general definition.'' We also propose to delete the phrase ''stems shall be properly clipped.'' Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
''U.S. No. 1'' shall consist of grapefruit of similar varietal characteristics which are mature, fairly well colored, firm, well formed, of fairly smooth texture for the variety, and not excessively thick skinned; free from decay, broken skins which are not healed, hard or	No change.	N/A.
dry skins, bruises (except those incident to proper handling and packing), and from damage caused by dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	dry skins, and free from damage caused by bruises, dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	We propose to change the phrase ''free from bruises'' to ''free from damage by bruises'' which is more consistent with other fruit and vegetable standards. Typically, bruising is defined under the definitions of injury, damage and serious damage. As proposed, when bruising is encountered in the U.S. No. 1 grade, it will be considered damage.
sprouting, dirt or other foreign materials, disease, insects, or mechanical or other means. Stems shall be properly clipped. (See ''Tolerances'')	oil spots, skin breakdown, sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See ''Tolerances'')	We propose to add ''free from damage by'' to the defects skin breakdown and oil spots to be more consistent with other fruit and vegetable standards. These defects are currently scored based on the ''general definition.'' We also propose to delete the phrase ''stems shall be properly clipped.'' Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
''U.S. No. 2'' shall consist of grapefruit of similar varietal characteristics which are mature, slightly colored, fairly firm, fairly well formed, and not decidedly rough; free from decay, broken skins which are not healed, hard or dry skins, and from serious damage caused by bruises, dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	No change.	N/A.

Current standard	Proposed	Discussion
sprouting, dirt or other foreign materials, disease, insects, or mechanical or other means. Stems shall be properly clipped. (See ''Tolerances'')	oil spots, skin breakdown, sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See ''Tolerances'')	We propose to add ''free from serious damage by'' to the defects skin breakdown and oil spots. These defects are currently scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of these defects. We also propose to delete the phrase ''stems shall be properly clipped.'' Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
''U.S. Combination grade.'' Any lot of grapefruit may be designated ''U.S. Combination'' when not less than 40 percent, by count, of the fruits in each container meet the requirements of U.S. No. 1 grade and the remainder U.S. No. 2 grade. (See ''Tolerances'')	''U.S. Combination grade'' shall consist of a combination of U.S. No. 1 and U.S. No. 2 grapefruit: Provided, That at least 40 percent, by count, of the grapefruit in each lot shall meet the requirements of the U.S. No. 1 grade. (See ''Tolerances'')	We propose to re-word the requirements of this grade to make it consistent with other commodities containing a Combination grade.
''U.S. No. 3'' shall consist of grapefruit of similar varietal characteristics which are mature, slightly colored, which may be slightly spongy, misshapen, and rough but not seriously lumpy; which are free from decay, broken skins which are not healed, hard or dry	No change.	N/A.
skins, and from serious damage caused by bruises, dryness or mushy condition, and from very serious damage caused by sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn	skins, and free from very serious damage caused by bruises, dryness or mushy condition, sprayburn, fumigation, exanthema, scars, green spots, scale, sunburn, oil spots, skin breakdown,	We propose to change the phrases ''free from serious damage by bruises'' and ''free from dryness or mushy condition'' to ''free from very serious damage by bruises, dryness or mushy condition.'' In other citrus standards, defects scored against the U.S. No. 3 grade are typically ''very serious damage.'' This revision will make it more consistent with those standards. We also propose to add the phrase ''free from very serious damage by skin breakdown and oil spots.'' These defects are currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of these defects.''
sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. Stems shall be properly clipped. (See ''Tolerances'')	sprouting, dirt or other foreign materials, disease, insects or mechanical or other means. (See ''Tolerances'')	We propose to delete the phrase ''stems shall be properly clipped.'' Present harvesting and packing techniques remove all stems from the fruit, making this requirement unnecessary.
''Unclassified'' shall consist of grapefruit which have not been classified in accordance with any of the foregoing grades. The term ''unclassified'' is not a grade within the meaning of these standards but is provided as a designation to show that no definite grade has been applied to the lot.	Delete.	When changing or updating standards in recent years, references to ''Unclassified'' have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that ''Unclassified'' is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated.
''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, U.S. No. 3 and U.S. Combination grades are provided as specified:	''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances, by count, based on a minimum 25 count sample, set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 2, U.S. No. 3 and U.S. Combination grades are provided as specified:	The proposed addition of the phrase ''a minimum 25 count sample'' establishes a basis for uniform sampling. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change also is consistent with the industry's request.

Current standard	Proposed	Discussion
''U.S. Fancy, U.S. No. 1, U.S. No. 2 and U.S. No. 3 grades.'' Not more than 10 percent, by count, of the fruit in any lot may fail to meet the requirements of the specified grade, other than for color, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. In addition, not more than 10 percent, by count, of the fruit in any lot may not meet the requirements relating to color.	''U.S. Fancy, U.S. No. 1, and U.S. No. 2 grades.'' For defects at shipping point. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate ''Shipping Point'' tolerances to standardize them with other fruit and vegetable standards. A tolerance for very serious damage and a ''whole number'' decay tolerance are also proposed. Tolerances for very serious damage are part of all other standards that contain a No. 3 grade and a whole number decay tolerance at shipping point is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of ''not more than one-twentieth of (10%), or one-half of 1 percent'' may be a confusing concept to an industry which is accustomed to ''whole'' percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors ''round up'' percentages ending in .5 or more and ''round down'' those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards.
	''U.S. Fancy, U.S. No. 1, and U.S. No. 2 grades.'' For defects en route or at destination. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing very serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
	''U.S. No. 3 grade.'' For defects at shipping point. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 1 percent for decay	We propose to establish separate tolerances at ''Shipping Point'' to be more consistent with other fruit and vegetable standards. Also included is a 1 percent shipping point decay tolerance which is commonly found in other citrus standards.
	''U.S. No. 3 grade.'' For defects en route or at destination. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.	We propose to establish separate tolerances ''En Route or at Destination'' to be more consistent with other fruit and vegetable standards. Included is a tolerance for permanent defects and a total defects tolerance. The decay tolerance would remain at 3 percent.

Current standard	Proposed	Discussion
''U.S. Combination grade.'' Not more than 10 percent, by count, of the fruit in any lot may fail to meet the requirements of this grade, other than for color, but not more than one-twentieth of this amount, or one-half of 1 percent, shall be allowed for decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for decay en route or at destination. This 3 percent tolerance may be used to reduce the percentage of U.S. No. 1 grade required in the combination, provided the affected fruits meet the requirements of the U.S. No. 1 grade in other respects. In addition, not more than 10 percent, by count, of the fruit in any lot may not meet the requirements of the U.S. No. 2 grade for color.	''U.S. Combination grade.'' For defects at shipping point. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 5 percent for very serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate tolerances at ''Shipping Point'' to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing very serious damage; and for total defects. The decay tolerance is also changed to 1 percent. These tolerances are commonly found in other citrus standards.
	''U.S. Combination grade.'' For defects en route or at destination. Not more than 10 percent, by count, of the grapefruit in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 12 percent, by count, of the grapefruit in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be more consistent with other fruit and vegetable standards. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
No part of any tolerance, other than that for decay, shall be allowed to reduce for the lot as a whole the percentage of U.S. No. 1 in the combination, but individual containers may have not more than a total of 10 percent less than the percentage of U.S. No. 1 specified: Provided, That the entire lot averages within the percentage specified.	''U.S. Combination grade.'' For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 grapefruit required in the U.S. Combination grade, but individual samples may have not less than 30 percent less of U.S. No. 1 required: Provided, That the entire lot averages within the percentage specified.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination. We also propose to re-word this section to make it consistent with other fruit and vegetable standards including those listed in this Notice.
''Application of tolerances to individual packages.'' (a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitation: Provided, That the averages for the entire lot are within the tolerances specified for the grade.	''Application of tolerances.'' Individual samples, based on a minimum 25 count, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose to change the standards to include minimum 25 count samples, not ''packages.'' This is consistent with the recently-changed Florida Citrus Standards. Individual sample tolerances are also proposed to reflect the language and tolerances widely used in other fruit and vegetable standards.
(1) For packages which contain more than 25 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 25 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed or very seriously damaged fruit may be permitted in any package.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.

Current standard	Proposed	Discussion
(2) For packages which contain 25 pounds or less, individual packages in any lot are not restricted as to the percentage of defects: Provided, That not more than one grapefruit which is seriously damaged by dryness or mushy condition or very seriously damaged by other means may be permitted in any package and, in addition, en route or at destination not more than 10 percent of the packages may have more than one decayed fruit.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.
''Standard pack.'' (a) Grapefruit shall be fairly uniform in size, and, when packed in boxes, shall be arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well wrapped.	''Standard pack.'' (a) Grapefruit shall be fairly uniform in size, and, when packed in boxes, shall be arranged according to the approved and recognized methods.	We propose to delete the reference to ''wrapped fruit'' because the industry no longer packs fruit in this manner.
(b) All packages shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled packages.	No change.	N/A.
(c) When packed in standard nailed boxes, grapefruit shall show a minimum bulge of 2 inches, except that grapefruit of a size 80 size or smaller need only show a bulge of 1½ inches.	Delete.	We propose to delete the reference to ''nailed boxes'' as they are no longer used by the industry.
(d) ''Fairly uniform in size'' means that not more than 5 percent, by count, of the fruit in any container may be more than one standard size larger or smaller than the standard size for the count packed.	(d) ''Fairly uniform in size'' means that not more than 5 percent, by count, of the fruit in any sample may be more than one standard size larger or smaller than the standard size for the count packed.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
(e) Example of standard size grapefruit: The standard size grapefruit for a 64 count is that size grapefruit which will pack tightly 64 grapefruit of uniform size when packed according to the approved and recognized method.	No change.	N/A.
(f) In order to allow for variations, incident to proper packing, not more than 5 percent of the packages in any lot may not meet the requirements of standard pack.	(f) In order to allow for variations, incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements of standard pack.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
''Standards for export.'' (a) Not more than a total of 10 percent, by count, of the grapefruit in any container may be soft, affected by decay, damaged by skin breakdown, have broken skins which are not healed, or be seriously damaged by dryness or mushy condition, except that:	''Standards for export.'' (a) Not more than a total of 10 percent, by count, of the grapefruit in any sample may be soft, affected by decay, damaged by skin breakdown, have broken skins which are not healed, or be seriously damaged by dryness or mushy condition, except that:	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
(1) Not more than one-half of 1 percent shall be allowed for grapefruit affected by decay.	No change.	N/A.
(2) Not more than 3 percent shall have broken skins which are not healed.	No change.	N/A.
(3) Not more than 5 percent shall be soft.	No change.	N/A.
(4) Not more than 5 percent shall be seriously damaged by dryness or mushy condition.	No change.	N/A.
(5) Not more than 5 percent shall be damaged by skin breakdown.	No change.	N/A.
(b) Any lot of grapefruit shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the grapefruit in any container has any of the defects enumerated in the standards for export.	(b) Any lot of grapefruit shall be considered as meeting the standards for export if the entire lot averages within the requirements specified: Provided, That no sample from the containers in any lot shall have more than double the percentage specified for any one defect, and that not more than a total of 10 percent, by count, of the grapefruit in any sample has any of the defects enumerated in the standards for export.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
''Similar varietal characteristics'' means that the fruits in any container are similar in color and type.	No change.	N/A.
''Well colored'' means that the fruit is yellow in color, with not more than a trace of green.	No change.	N/A.

Current standard	Proposed	Discussion
''Firm'' means that the fruit is not soft or noticeably wilted or flabby. The skin may feel slightly springy or spongy.	No change.	N/A.
''Well formed'' means that the fruit shows the normal shape characteristic of the variety.	No change.	N/A.
''Smooth'' means that the skin is of fairly fine grain, the ''pebbling'' is not pronounced, and any furrows radiating from the stem end are short and shallow.	''Smooth texture'' means that the skin is of fairly fine grain, the ''pebbling'' is not pronounced, and any furrows radiating from the stem end are short and shallow.	We propose to change ''Smooth'' to ''Smooth texture'' to make it consistent with the other citrus standards.
''Fairly thin skinned'' means that the skin thickness does not average more than three-eighths of an inch, on a central cross section, in sizes 100 or smaller, or more than seven-sixteenths of an inch in sizes larger than 100.	''Fairly thin skinned'' means that the skin thickness does not average more than ½ of an inch, on a central cross section, on a grapefruit 4⅛ inches in diameter.	We propose to change the size reference from ''100 size'' to ''4⅛ inches'' in diameter.'' This will provide a standard measurement for determining defects.
''Injury'' means any defect which more than slightly affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:	No change.	N/A.
(a) Sprayburn which changes the color to such an extent that the appearance of the fruit is noticeably injured, or which causes scarring that aggregates more than one-half inch in diameter.	No change.	N/A.
(b) Fumigation injury which noticeably detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 10 percent of the fruit surface, or as solid or depressed scarring which aggregates more than one-half of an inch in diameter.	No change.	N/A.
(c) Exanthema which noticeably detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 10 percent of the fruit surface, or as solid scarring which aggregates more than one-half of an inch in diameter.	No change.	N/A.
(d) Scars which are very rough or very deep; or scars which are very dark when more than one-fourth of an inch in diameter.	No change.	N/A.
(e) Scars which are dark, rough, or deep and aggregate more than one-half of an inch in diameter.	No change.	N/A.
(f) Scars which are fairly light in color, slightly rough, or of slight depth and aggregate more than 5 percent of the fruit surface.	No change.	N/A.
(g) Scars which are light in color, fairly smooth, with no depth and aggregate more than 10 percent of the fruit surface.	No change.	N/A.
(i) Scale, when more than 5 medium to large California red or purple scale are adjacent to the ''button'' at the stem end, or scattered over the fruit, or any scale which affects the appearance of the fruit to a greater extent.	No change.	N/A.
(j) Sunburn which appreciably changes the normal color or shape of the fruit, or affects more than 10 percent of the fruit surface.	No change.	N/A.
	(k) Green spots, oil spots (oleocellosis) or other similar injuries which are depressed or soft, or which have an aggregate area of more than 2½ percent of the fruit surface, or which are green and more than ¼ in number.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(l) Skin breakdown when exceeding that of a circle ¼ inch in diameter.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(m) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.

Current standard	Proposed	Discussion
''Fairly well colored'' means that yellow color predominates on the fruit and that the fruit is free from distinctly green streaks and distinctly green blotches.	No change.	N/A.
''Fairly smooth'' means that the skin does not feel noticeably rough or coarse. The size of the fruit should be considered in judging the texture, as large fruit is not usually as smooth as the small. It is common for the fruit to show larger and coarser ''pebbling'' on the stem end portion than on the blossom end. Slight furrows or grooves which may be present on the stem end portion of the fruit shall not be considered as slightly rough unless they are of sufficient depth, length, and number to materially affect the appearance and smoothness of the grapefruit.	''Fairly smooth texture'' means that the skin does not feel noticeably rough or coarse. The size of the fruit should be considered in judging the texture, as large fruit is not usually as smooth as the small. It is common for the fruit to show larger and coarser ''pebbling'' on the stem end portion than on the blossom end. Slight furrows or grooves which may be present on the stem end portion of the fruit shall not be considered as slightly rough unless they are of sufficient depth, length, and number to materially affect the appearance and smoothness of the grapefruit.	We propose to change ''Fairly smooth'' to ''Fairly smooth texture'' to make it consistent with the other citrus standards.
''Excessively thick skinned'' means that the skin thickness averages more than seven-sixteenths of an inch, on a central cross section, in sizes 100 or smaller, or more than one-half of an inch in sizes larger than 100.	''Excessively thick skinned'' means that the skin thickness averages more than 5⁄8 of an inch, on a central cross section, on a grapefruit 4 1⁄8 inches in diameter.	We propose to change the size reference from ''100 size'' to ''4 1⁄8 inches'' in diameter. This will provide a standard measurement for determining defects.
''Damage'' means any injury which materially affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:	No change.	N/A.
(a) Dryness or mushy condition, when affecting all segments more than one-fourth of an inch at the stem end, or the equivalent of this amount by volume, when occurring in other portions of the fruit.	No change.	N/A.
(b) Sprayburn which changes the color to such an extent that the appearance of the fruit is materially injured, or which causes scarring that aggregates more than three-fourths of an inch in diameter.	No change.	N/A.
(c) Fumigation injury which materially detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 25 percent of the fruit surface, or as solid scarring or depressions which aggregate more than three-fourths of an inch in diameter.	No change.	N/A.
(d) Exanthema which material detracts from the appearance of the fruit, or which occurs as small, thinly scattered spots over more than 25 percent of the fruit surface, or as solid scarring, that is not cracked, which aggregates more than three-fourths of an inch in diameter.	No change.	N/A.
(e) Scars which are very deep; or scars which are very rough or very dark and aggregate more than one-half of an inch in diameter.	No change.	N/A.
(f) Scars which are dark, rough or deep and aggregate more than three-fourths of an inch in diameter.	No change.	N/A.
(g) Scars which are fairly light in color, slightly rough, or of slight depth and aggregate more than 10 percent of the fruit surface.	No change.	N/A.
(h) Scars which are light colored, fairly smooth, with no depth and aggregate more than 15 percent of the fruit surface.	No change.	N/A.
(i) Green spots which are depressed or soft, or more than seven in number, or which aggregate more than 5 percent of the fruit surface.	(i) Green spots, oil spots (oleocellosis) or other similar injuries which are depressed or soft, or which have an aggregate area of more than 5 percent of the fruit surface, or which are green and more than 7 in number.	We propose to score Green spots and oil spots using the same criteria. These are similar defects and scoring is comparable in other citrus standards.

Current standard	Proposed	Discussion
(j) Scale, when more than 10 medium to large California red or purple scale are adjacent to the ''button'' at the stem end, or scattered over the fruit, or any scale which affects the appearance of the fruit to a greater extent.	No change.	N/A.
(k) Sunburn which causes appreciable flattening of the fruit, drying or darkening of the skin, or affects more than 25 percent of the fruit surface.	No change.	N/A.
	(l) Skin breakdown when exceeding that of a circle 3/8 inch in diameter.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(m) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
''Slightly colored'' means that sufficient yellow color is distributed over the fruit surface and, when blended with the green color present, is equivalent to 25 percent of full yellow color characteristic of the variety.	No change.	N/A.
''Fairly firm'' means that the fruit may be slightly soft but is not decidedly flabby. The skin may be thick and slightly puffy.	No change.	N/A.
''Fairly well formed'' means that the fruit is not materially flattened, materially pointed, extremely elongated, or otherwise decidedly deformed.	No change.	N/A.
''Decidedly rough'' means that the skin is materially rough, materially lumpy, decidedly folded, or decidedly ridged.	No change.	N/A.
''Serious damage'' means any injury which seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect; shall be considered as serious damage:	No change.	N/A.
(a) Dryness or mushy condition, when affecting all segments more than one-half of an inch at the stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	No change.	N/A.
(b) Sprayburn which changes the color to such an extent that the appearance of the fruit is seriously injured, or which causes scarring that aggregates more than 10 percent of the fruit surface.	No change.	N/A.
(c) Fumigation injury which occurs as small, thinly scattered spots over more than one-half of the fruit surface, or solid scarring of depressions which aggregate more than 5 percent of the fruit surface.	No change.	N/A.
(d) Exanthema which occurs as small, thinly scattered spots over more than one-half of the fruit surface, or solid scarring that is not cracked, which aggregates more than 5 percent of the fruit surface.	No change.	N/A.
(e) Scars which are very deep; or scars which are very rough or very dark and aggregate more than one inch in diameter.	No change.	N/A.
(f) Scars which are dark, rough, or deep and aggregate more than 5 percent of the fruit surface.	No change.	N/A.
(g) Scars which are fairly light in color, slightly rough or of slight depth and aggregate more than 15 percent of the fruit surface.	No change.	N/A.
(h) Scars which are light colored, fairly smooth, with no depth and aggregate more than 25 percent of the fruit surface.	No change.	N/A..

Current standard	Proposed	Discussion
(i) Green spots which are soft or aggregate more than 2 inches in diameter.	(i) Green spots, oil spots (oleocellosis) or other similar injuries which are soft, or which have an aggregate area of more than 10 percent of the fruit surface.	We propose to score Green spots and oil spots using the same criteria. These are similar defects and scoring is comparable in other citrus standards.
(j) Scale, when California red or purple scale is concentrated as a ring or blotch, or which is more than thinly scattered over the fruit surface, or any scale which affects the appearance of the fruit to a greater extent.	No change.	N/A.
(k) Sunburn which causes decided flattening of the fruit, drying or dark discoloration of the skin, or which affects more than one-third of the fruit surface.	No change.	N/A.
	(l) Skin breakdown when exceeding that of a circle 5/8 inch in diameter	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(m) Bruising when segment walls are collapsed, or albedo is ruptured and juice sacs are ruptured.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
''Slightly spongy'' means that the fruit is puffy or slightly wilted but not decidedly flabby.	No change.	N/A.
''Misshapen'' means that the fruit is materially flattened, materially pointed, extremely elongated or otherwise decidedly deformed.	No change.	N/A.
''Very serious damage'' means any injury which very seriously affects the appearance, or the edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as very serious damage:	No change.	N/A.
(a) Sprayburn which seriously affects more than 25 percent of the fruit surface.	No change.	N/A.
(b) Fumigation injury which causes deep, rough, or dark scarring which aggregates more than 25 percent of the fruit surface.	No change.	N/A.
(c) Exanthema which aggregates more than 10 percent of the fruit surface or causes serious cracks.	No change.	N/A.
(d) Scars which are very dark, very rough, or very deep and aggregate more than 10 percent of the fruit surface.	No change.	N/A.
(e) Scars which are dark, rough or deep and aggregate more than 25 percent of the fruit surface.	No change.	N/A.
(f) Green spots which are badly sunken or soft.	(f) Green spots, oil spots (oleocellosis) or other similar injuries which are badly sunken or soft, or which have an aggregate area of more than 25 percent of the fruit surface.	We propose to score Green spots and oil spots using the same criteria. These are similar defects and scoring is comparable in other citrus standards.
(g) Scale so numerous or large that the appearance of the fruit is very seriously affected.	No change.	N/A.
(h) Sunburn which seriously affects more than one-third of the fruit surface.	No change.	N/A.
	(i) Skin breakdown when exceeding that of a circle 1¼ inches in diameter.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	(j) Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than ¾ inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.

Current standard	Proposed	Discussion
	(k) Dryness or mushy condition, when affecting all segments more than three-fourths of an inch at the stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change the phrase ''free from serious damage by dryness or mushy condition'' to ''free from very serious damage by dryness or mushy condition.'' In other citrus standards, defects scored against the U.S. No. 3 grade are typically ''very serious damage.'' This change will make it consistent with those standards.
	Note: All references in this standard to area, aggregating area, or length are based on a grapefruit 4⅛ inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	Currently, the standard does not state whether defects are based on a specific size fruit; or if greater defective areas are allowed on larger fruit and lesser areas on smaller fruit. Many fruit and vegetable standards contain this distinction. To clarify the issue and to standardize with other fruit and vegetable standards, we propose to include this statement.
United States Standards for Grades of Tangerines		
''General.'' (a) The tolerances for the standards are on a container basis. However, individual packages in any lot may vary from the specified tolerances as stated below, provided the averages for the entire lot, based on sample inspection, are within the tolerances specified.	Delete.	We propose to delete this section and add an ''Application of Tolerances'' section after ''Tolerances.'' This will maintain consistency with other standards.
(b) For packages which contain more than 10 pounds and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified except that at least one decayed or very seriously damaged fruit may be permitted in any package.	Delete.	We propose to delete this section and add an ''Application of Tolerances'' section after ''Tolerances.'' This will maintain consistency with other standards.
(c) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects except that not more than one fruit which is decayed or very seriously damaged shall be allowed in any package.	Delete.	We propose to delete this section and add an ''Application of Tolerance'' section after ''Tolerances.'' This will maintain consistency with other standards.
''U.S. Fancy'' shall consist of tangerines which are mature, firm, and well formed; free from soft bruises, bird pecks, unhealed skin breaks, and decay;	''U.S. Fancy'' shall consist of tangerines which are mature, firm, and well formed; free from unhealed skin breaks, dryness or mushy condition, hard or dry skins and decay;	We propose to delete the phrase ''free from soft bruises'' and add ''free from injury by bruises'' to the listing of ''free from injury'' defects. It is consistent with other standards to define bruising separately under the definitions for injury, damage, serious damage, and very serious damage. We also propose to delete ''free from bird pecks.'' Advances in agricultural techniques have virtually eliminated this defect. Also proposed is the addition of the ''free from dryness or mushy condition'' and ''hard or dry skins'' requirements. These requirements are consistent with those contained in other citrus standards.
free from damage by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	free from injury caused by ammoniation, bruising, creasing, green spots or oil spots, skin breakdown, scale, sprouting, sprayburn, and sunburn, and free from damage caused by buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	We propose to delete the term ''pitting'' and replace it with the term ''skin breakdown.'' Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including ''pitting.'' We also propose to delete the term ''unsightly discoloration'' to eliminate the confusion with ''discoloration''. The defect ''discoloration'' is defined in Section 51.1785. No definition for ''unsightly discoloration'' exists in the standards.

Current standard	Proposed	Discussion
(a) Each fruit in this grade shall be highly colored.	(a) Each fruit in this grade shall be well colored.	We propose this change to be more consistent with other citrus standards containing this requirement.
(b) In this grade not more than 1/10 of the surface in the aggregate of each fruit may have a light shade of brown discoloration caused by rust mite, or an equivalent in appearance to this amount when the fruit is discolored by any cause. (See ''Tolerances'')	No change.	N/A.
''U.S. No. 1'' shall consist of tangerines which are mature, firm, and well formed; free from soft bruises, bird pecks, unhealed skin breaks, and decay;	''U.S. No. 1'' shall consist of tangerines which are mature, firm, and well formed; free from unhealed skin breaks, hard or dry skins, and decay;	We propose to delete the phrase ''free from soft bruises'' and add ''free from damage by bruises'' to the listing of ''free from damage by'' defects. It is consistent with other standards to define bruising separately under the definitions for injury, damage, serious damage, and very serious damage. We also propose to delete the phrase ''free from bird pecks.'' Advances in agricultural techniques have virtually eliminated this defect. Also proposed is the addition of the requirement ''free from hard or dry skins.'' This requirement is consistent with those contained in other citrus standards.
free from damage by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	free from damage by ammoniation, bruising, creasing, dryness or mushy condition, green spots or oil spots, skin breakdown, scale, sprouting, sprayburn, sunburn, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	We propose to delete the term ''pitting'' and replace it with the term ''skin breakdown.'' Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including ''pitting.'' We also propose to delete the term ''unsightly discoloration'' to eliminate the confusion with ''discoloration''. The defect ''discoloration'' is defined in Section 51.1785. No definition for ''unsightly discoloration'' exists in the standards.
(a) Each fruit of this grade shall be fairly well colored.	No change.	N/A.
(b) In this grade not more than one-third of the surface in the aggregate of each fruit may have a light shade of brown discoloration caused by rust mite, or an equivalent in appearance to this amount when the fruit is discolored by any cause. (See ''Tolerances'')	No change.	N/A.
''U.S. No. 1 Bronze.'' The requirements for this grade are the same as for U.S. No. 1 except for discoloration. In this grade at least 75 percent, by count, of the fruit shall show some discoloration, and more than 20 percent, by count, of the fruit shall have more than one-third of the surface of each fruit affected with bronzed russeting: Provided, That no discoloration that exceeds the amount allowed in the U.S. 1 grade shall be permitted unless such discoloration is caused by thrip or wind scars, or rust mite. (See ''Tolerances'')	No change.	N/A.
	''U.S. Combination'' consists of a combination of U.S. No. 1 and U.S. No. 2 tangerines: Provided, That at least 40 percent, by count, of the tangerines in each lot shall meet the requirements of the U.S. No. 1 grade. (See ''Tolerances'')	We propose the addition of the Combination grade to make it consistent with other standards.

Current standard	Proposed	Discussion
''U.S. No. 2'' shall consist of tangerines which are mature, fairly firm, and fairly well formed; free from soft bruises, bird pecks, unhealed skin breaks, and decay;	''U.S. No. 2'' shall consist of tangerines which are mature, fairly firm, and fairly well formed; free from unhealed skin breaks, hard or dry skins, and decay;	We propose to delete the phrase ''free from soft bruises'' and add ''free from serious damage by bruises'' to the listing of ''free from serious damage by'' defects. It is consistent with other standards to define bruising separately under the definitions for injury, damage, serious damage, and very serious damage. We also propose to delete the phrase ''free from bird pecks.'' Advances in agricultural techniques have virtually eliminated this defect. Also proposed is the addition of the requirement ''free from hard or dry skins.'' This requirement is consistent with those contained in other citrus standards.
free from serious damage by ammoniation, creasing, dryness or mushy condition, green spots or oil spots, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	free from serious damage by ammoniation, bruising, creasing, dryness or mushy condition, green spots or oil spots, skin breakdown, scale, sprouting, sprayburn, sunburn, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means.	We propose to delete the term ''pitting'' and replace it with the term ''skin breakdown.'' Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including ''pitting.'' We also propose to delete the term ''unsightly discoloration'' to eliminate the confusion with ''discoloration''. The defect ''discoloration'' is defined in Section 51.1785. No definition for ''unsightly discoloration'' exists in the standards.
(a) Each fruit of this grade shall be reasonably well colored.	No change.	N/A.
(b) In this grade not more than two-thirds of the surface in the aggregate of each fruit may be affected with light brown discoloration, or may have the equivalent to this amount in appearance when the fruit has lighter or darker shades of discoloration. (See ''Tolerances'')	No change.	N/A.
''U.S. No 2. Russet.'' The requirements for this grade are the same as for U.S. No. 2 except that more than 20 percent, by count, of the fruits shall have in excess of two-thirds of the surface in the aggregate affected with light brown discoloration. (See ''Tolerances'')	No change.	N/A.
''U.S. No. 3'' shall consist of tangerines which are mature, not flabby and not seriously lumpy; which are free from unhealed bird pecks, unhealed skin breaks and decay;	''U.S. No. 3'' shall consist of tangerines which are mature, not flabby and not seriously lumpy; which are free from unhealed skin breaks, hard or dry skins, and decay;	We propose to delete the phrase ''free from unhealed bird pecks.'' Advances in agricultural practices have virtually eliminated this defect. We also propose to add the phrase ''free from hard or dry skins.'' This requirement is consistent with those contained in other citrus standards.
free from very serious damage by bruises, ammoniation, creasing, dryness or mushy condition, pitting, scale, sprouting, sprayburn, sunburn, unsightly discoloration, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means. (See ''Tolerances'')	free from very serious damage by bruises, ammoniation, creasing, dryness or mushy condition, oil spots or green spots, skin breakdown, scale, sprouting, sprayburn, sunburn, buckskin, melanose, scars, scab, dirt or other foreign materials, disease, insects, mechanical or other means. (See ''Tolerances'')	We propose to delete the term ''pitting'' and replace it with the term ''skin breakdown.'' Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including ''pitting.'' We also propose to delete the term ''unsightly discoloration'' to eliminate the confusion with ''discoloration''. The defect ''discoloration'' is defined in Section 51.1785. No definition for ''unsightly discoloration'' exists in the standards.
''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2, U.S. No. 2 Russet, and U.S. No. 3 are provided as specified.	''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the tolerances, by count, based on a minimum 25 count sample, set forth in the U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. Combination, U.S. No. 2, U.S. No. 2 Russet, and U.S. No. 3 are provided as specified.	The proposed addition of the phrase ''a minimum 25 count sample'' establishes a basis for uniform sampling. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change is also consistent with the industry's request.

Current standard	Proposed	Discussion
''U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2 and U.S. No. 2 Russet.'' Not more than a total of 10 percent, by count, of the fruit in any container may be below the requirements of the grade other than for discoloration but not more than 5 percent shall be allowed for very serious damage other than by dryness or mushy condition and not more than one-half of 1 percent shall be allowed for decay at shipping point: Provided, That a total tolerance of not more than 3 percent shall be allowed for decay en route or at destination. In addition, not more than a total of 10 percent, by count, of the fruit in any container may not meet the requirements relating to discoloration but not more than 2 percent shall be allowed for serious damage by unsightly discoloration.	''U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2 and U.S. No. 2 Russet.'' For defects at shipping point. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements relating to discoloration. In addition, not more than 10 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the specified grade, included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate ''Shipping Point'' tolerances to standardize them with other fruit and vegetable standards. A ''whole number'' decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of ''not more than one-half of 1 percent may be a confusing concept to an industry which is accustomed to ''whole'' percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors ''round up'' percentages ending in .5 or more and ''round down'' those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.
	''U.S. Fancy, U.S. No. 1, U.S. No. 1 Bronze, U.S. No. 2 and U.S. No. 2 Russet.'' For defects en route or at destination. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements relating to discoloration. In addition, not more than 12 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing very serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
''U.S. No. 3.'' Not more than a total of 15 percent, by count, of the fruit in any container may be below the requirements of this grade but not more than 5 percent shall be allowed for defects other than dryness or mushy condition, and not more than 1 percent shall be allowed for decay at shipping point: Provided, That a total tolerance of not more than 3 percent shall be allowed for decay en route or at destination.	''U.S. No. 3.'' For defects at shipping point. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements of the specified grade, included in this amount not more than 1 percent for decay.	We propose to establish separate tolerances at ''Shipping Point'' and ''En Route or at Destination'' to standardize them with other fruit and vegetable standards. Also proposed is a total defects tolerance of 10 percent at shipping point. A 12 percent total defects tolerance and a 10 percent permanent defects tolerance en route or at destination is also proposed. These tolerances are consistent with other citrus standards. The decay tolerances in this remain unchanged.
	''U.S. No. 3.'' For defects en route or at destination. Not more than 12 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the specified grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 3 percent for decay.	

Current standard	Proposed	Discussion
	''U.S. Combination grade.'' For defects at shipping point. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to discoloration. In addition, not more than 10 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 5 percent for very serious damage, included in this latter amount not more than 1 percent for decay.	We propose the addition of this grade to provide industry the option of packing to a certified combination grade. In this ''new'' grade, the format and percentages are consistent with those found in other citrus standards. Separate tolerances at ''Shipping Point'' are included as well as a separate tolerance for very serious damage and a 1 percent decay tolerance.
	''U.S. Combination grade.'' For defects en route or at destination. Not more than 10 percent, by count, of the tangerines in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to discoloration. In addition, not more than 12 percent, by count, of the tangerines in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects, included in the latter amount not more than 3 percent for decay.	We propose the addition of this grade to provide industry the option of packing to a certified combination grade. In this ''new'' grade, the format and percentages are consistent with those found in other citrus standards. Separate tolerances ''En Route or at Destination'' are included as well as separate permanent defects tolerances, a tolerance for very serious damage and a 3 percent decay tolerance.
	''U.S. Combination grade.'' For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 tangerines required in the U.S. Combination grade, but individual samples may have not less than 30 percent of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	We propose the addition of this section to make it consistent with other fruit and vegetable standards including those listed in this Notice. Use of the term ''sample'' is continued in this section to reflect the proposed change from ''container'' as listed throughout this Notice.
	''Application of tolerances.'' Individual samples, based on a minimum 25 count sample, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose the addition of this section to be consistent with other fruit and vegetable standards. It contains language and format commonly found in most standards. This is also a change of the ''General'' section located at the beginning of this standard and includes the phrase ''minimum 25 count sample'' that is found throughout this Notice.
''Standard pack.'' (a) The tangerines in each container shall be packed in accordance with recognized methods. Each container shall be well filled and properly marked to indicate the size of the fruit. When the figures used to indicate size of the fruit vary from the actual number of tangerines in the container, as in the case of fractional parts of boxes, the figures indicating size shall be followed by the letter ''s'' or the word ''size,'' as, for example, ''210s,'' or ''210 size.'' Containers which are not so marked shall not be regarded as meeting requirements of ''standard pack.''	No Change.	N/A.
(b) Fruit in each container shall be of a size not less than the minimum diameters specified below for the various packs. Packs other than those listed shall have a minimum size not less than specified for the nearest count.	(b) Fruit in each sample shall be of a size not less than the minimum diameters specified below for the various packs. Packs other than those listed shall have a minimum size not less than specified for the nearest count.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.

Current standard	Proposed	Discussion
Diameter in inches: Pack Minimum 100 ... $2^{15}/_{16}$ 120 ... $2^{11}/_{16}$ 150 ... $2^{8}/_{16}$ 176 ... $2^{6}/_{16}$ 210 ... $2^{4}/_{16}$ 246 ... $2^{2}/_{16}$ 294 ... 2	Diameter in inches: Pack Minimum 100 ... $2^{15}/_{16}$ 120 ... $2^{11}/_{16}$ 150 ... $2^{8}/_{16}$ 176 ... $2^{6}/_{16}$ 210 ... $2^{4}/_{16}$ 246 ... $2^{2}/_{16}$ 294 ... 2	
(c) In order to allow for variations incident to proper sizing, not more than 10 percent, by count, of the fruit in any container may be below the minimum size for the count as specified.	(c) In order to allow for variations incident to proper sizing, not more than 10 percent, by count, of the fruit in any sample may be below the minimum size for the count as specified.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
''Firm'' means that the flesh is not soft and the fruit is not badly puffy, and that the skin has not become materially separated from the flesh of the tangerine.	No change.	N/A
''Well formed'' means that the fruit has the characteristic tangerine shape and is not deformed.	No change	N/A.
	''Injury'' means any defect which more than slightly affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury: (a) Ammoniation which does not occur as light speck type; (b) Creasing which is more than barely visible, or which extends over more than 20 percent of the fruit surface; (c) Green spot or oil spots (oleocellosis or similar injuries) which are depressed or soft, or which have an aggregate area of a circle more than 3/8 inch in diameter, or which are green and more than 4 in number; (d) Skin breakdown when exceeding that of a circle 1/8 inch in diameter; (e) Sprayburn when causing the skin to become hard, or when aggregating more than a circle 3/8 inch in diameter; (f) Sunburn when causing the skin to become hard and affecting more than 10 percent of the fruit surface. (g) Scale when medium or large and more than 4 are present; (h) Bruising when segment walls are collapsed, or albedo is ruptured and juice sacs are ruptured.	We propose to add definitions of injury for the U.S. Fancy grade in an effort to establish an objective scoring base. It is consistent with other fruit and vegetable standards, as well as the citrus standards included in this Notice, to provide objective scoring criteria whenever practicable.
''Damage'' means any defect or blemish which more than slightly affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:	No change.	N/A.
(a) Ammoniation, when not occurring as speck-type similar to melanose: Provided, That no ammoniation shall be permitted that detracts from the appearance of the individual fruit to a greater extent than the amount of discoloration allowed for the grade.	(a) Ammoniation, when not occurring as light speck type, or which occurs as small, thinly scattered spots over more than 10 percent of the fruit surface, or as solid scarring which aggregates more than one-fourth of an inch in diameter.	We propose to change this definition to be more consistent with other citrus standards.
(b) Creasing, when it materially affects the appearance or shipping quality of the fruit.	(b) Creasing, when it materially weakens the skin, or extends over more than one-third of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(c) Dryness or mushy condition, when mushy or distinctly dry to a depth of more than one-eighth inch in all segments at the stem end, or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit.	(c) Dryness or mushy condition when affecting all segments more than one-eighth inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change this definition to be more consistent with other citrus standards.

Current standard	Proposed	Discussion
(d) Green spots or oil spots, when the appearance is affected to a greater extent than 10 green spots caused by scale, each of which is approximately one-eighth inch in diameter.	(d) Green spots or oil spots (oleocellosis) or similar injuries which are depressed or soft, or which have an aggregate area of more than 5 percent of the fruit surface, or which are green and more than 10 in number;	We propose to change this definition to be more consistent with other citrus standards.
(e) Pitting when materially affecting the appearance or shipping quality of the individual fruit.	(e) Skin breakdown when aggregating more than a circle ¼ inch in diameter.	We propose to delete the term ''pitting'' and replace it with ''skin breakdown.'' Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including ''pitting.'' We also propose to include an objective scoring guide for this defect, rather than retain the scoring guide based on the ''general definition.''
(f) Scale, when occurring as a blotch which averages more than three-eighths inch in diameter or any scale that detracts from the appearance of the individual fruit to a greater extent than a three-eighths inch blotch. ''Blotch'' refers to actual scale and not the discolored area caused by scale.	No change.	N/A.
(g) Sprayburn, when causing the skin to become hard or when it materially affects the appearance of the fruit.	(g) Sprayburn, when causing the skin to become hard, or when aggregating more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(h) Sunburn, when causing the skin to become hard or when it materially affects the appearance of the fruit.	(h) Sunburn, when causing the skin to become hard and affecting more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
	(i) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
(i) Unsightly discoloration, when the color or the pattern, or a combination of color and pattern, causes the fruit to have an unattractive appearance.	Delete.	We propose to delete the term ''unsightly discoloration'' to eliminate the confusion with ''discoloration''. The defect ''discoloration'' is defined in Section 51.1785. No definition for ''unsightly discoloration'' exists in the standards.
(j) Buckskin, when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	(j) Buckskin when aggregating more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(k) Melanose, when not small smooth speck-type, or any speck-type that detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed in the grade. Melanose that exceeds the amount allowed in the U.S. No. 1 grade is not permitted in the U.S. No. 1 Bronze grade.	No change.	N/A.
(l) Scars, when not smooth, or when causing any noticeable depression or when detracting from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	(l) Scars, when deep or rough aggregating more than a circle 1/4 inch in diameter; slightly rough with slight depth aggregating more than a circle 3/4 inch in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1–1/8 inches in diameter.	We propose to change this definition to be more consistent with other citrus standards.
(m) Scab, when not smooth, or when it affects shape or when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade. Scab injury that exceeds the amount allowed in the U.S. No. 1 grade is not permitted in the U.S. No. 1 Bronze grade.	(m) Scab, when it materially detracts from the shape or texture, or aggregates more than 5 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
''Highly colored'' means that the ground color of each fruit is a deep tangerine color with practically no trace of yellow color.''	''Well colored'' means that the ground color of each fruit is a deep tangerine color with practically no trace of yellow color.	We propose to change this definition to be more consistent with other citrus standards.

Current standard	Proposed	Discussion
''Discoloration'' includes discoloration caused by rust mite, melanose, scars, scab, or any other means. Shades of discoloration which blend with the ground color of the fruit may be allowed on a larger area than that specified in the grade for light brown discoloration, and shades of discoloration which are more in contrast with the ground color shall be restricted to a lesser area, provided no discoloration may affect the appearance to a greater extent than the amount light brown discoloration specified for the grade. Tangerines which show discoloration caused by melanose, scab, or any cause other than by thrip, or wind scars, or by rust mite shall not be permitted in the U.S. No. 1 Bronze grade when such discoloration exceeds the amount allowed in the U.S. No. 1 grade. (See ''Bronzed Russeting'')	No change.	N/A.
Fairly well colored'' means that each fruit may have not over one inch of green color in the aggregate and the remainder of the surface shall show a good tangerine color with some portion of the surface showing a reddish tangerine blush.	No change.	N/A.
''Bronzed russeting'' means russeting caused by thrip, or wind scars, or by rust mite or similar russeting which is not readily distinguishable from that caused by melanose, scab, etc., are not considered as ''bronzed russeting'' within the meaning of these standards but are regarded as defects when they exceed the amount permitted in the U.S. No. 1 grade and are not permitted in the U.S. No. 1 Bronze grade.	No change.	N/A.
''Fairly firm'' means that the flesh may be slightly soft but is not bruised or badly puffy, and that the skin has not become seriously separated from the flesh of the tangerine.	No change.	N/A.
''Fairly well formed'' means that the fruit may not have the shape characteristic of the variety but that it is not badly deformed.	No change.	N/A.
''Serious damage'' means any defect or blemish which seriously affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as serious damage:	No change.	N/A.
(a) Ammoniation, when scars are cracked, or dark and aggregating more than one-half inch in diameter or when light-colored and aggregating more than 1 inch in diameter.	No change.	N/A.
(b) Creasing, when it causes the skin to be seriously weakened.	(b) Creasing, when it seriously weakens the skin, or extends over more than one-half of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
	(c) Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
(c) Dryness or mushy condition, when mushy or distinctly dry to a depth of more than one-quarter inch in all segments at the stem end, or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit.	(d) Dryness or mushy condition when affecting all segments more than one-quarter inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated ''(d)'' due to the addition of ''(c) Bruising.''
(d) Green spots or oil spots, when the appearance is affected to a greater extent than 25 green spots, caused by scale, each of which is approximately one-eighth inch in diameter.	(e) Green spots or oil spots (oleocellosis) or similar injuries which are depressed or soft, or which have an aggregate area of more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated ''(e)'' due to the addition of ''(c) Bruising.''

Current standard	Proposed	Discussion
(e) Pitting, when seriously affecting the appearance or shipping quality of the fruit.	(f) Skin breakdown, when aggregating more than a circle 5/8 inch in diameter.	We propose to delete the term ''pitting'' and replace it with ''skin breakdown.'' Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including ''pitting.'' We also propose to include an objective scoring guide for this defect, rather than retain the scoring guide based on the ''general definition.'' This section is re-designated ''(f)'' due to the addition of ''(c) Bruising.''
(f) Scale, when occurring as a blotch which averages more than one-half inch in diameter, or any scale that detracts from the appearance of the fruit to a greater extent than a one-half inch blotch. ''Blotch'' refers to actual scale and not the discoloration caused by scale.	(g) Scale, when occurring as a blotch which averages more than one-half inch in diameter, or any scale that detracts from the appearance of the fruit to a greater extent than a one-half inch blotch. ''Blotch'' refers to actual scale and not the discoloration caused by scale.	This section is re-designated ''(g)'' due to the addition of ''(c) Bruising.''
(g) Sprayburn, when it has caused the skin to become hard, or when it seriously affects the appearance of the fruit.	(h) Sprayburn, when causing the skin to become hard, or when aggregating more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated ''(h)'' due to the addition of ''(c) Bruising.''
(h) Sunburn, when it has caused the skin to become hard, or when it seriously affects the appearance of the fruit.	(i) Sunburn, when causing the skin to become hard and affecting more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards. This section is re-designated ''(i)'' due to the addition of ''(c) Bruising.''
(i) Unsightly discoloration when the color or the pattern, or a combination of both, causes the fruit to have a distinctly unattractive appearance.	Delete.	We propose to delete the term ''unsightly discoloration'' to eliminate the confusion with ''discoloration''. The defect ''discoloration'' is defined in Section 51.1785. No definition for ''unsightly discoloration'' exists in the standards.
(j) Buckskin, when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	(j) Buckskin when aggregating more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(k) Melanose, when badly caked and aggregating more than 1/2 inch in diameter or when lightly caked and aggregating more than 1 inch in diameter, or when unsightly or when it detracts from the appearance of the fruit to a greater extent than the amount of discoloration allowed for the grade.	No change.	N/A.
(l) Scars, when not fairly smooth, or when causing any materially depressed areas, or when detracting from the appearance to a greater extent than the amount of discoloration allowed for the grade. Scars which are not fairly smooth, or which are materially depressed, are not permitted in either U.S. No. 2 or U.S. No. 2 Russet grades.	(l) Scars, when deep or rough aggregating more than a circle 1/2 inch in diameter; slightly rough with slight depth aggregating more than a circle 1 1/8 inches in diameter; smooth or fairly smooth with slight depth aggregating more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(m) Scab, when not fairly smooth, or when materially affects the shape of the fruit, or when it detracts from the appearance to a greater extent than the maximum amount of discoloration allowed for the grade.	(m) Scab, when it materially detracts from the shape or texture, or aggregates more than 10 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
''Reasonably well colored'' means that a good yellow or reddish tangerine color shall predominate over the green color on at least one-half of the fruit surface in the aggregate, and that each fruit shall show practically no lemon color.	No change.	N/A.
''Very serious damage'' means any defect or blemish which very seriously affects the appearance, or edible or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as very serious damage:	No change.	N/A.

Current standard	Proposed	Discussion
(a) Ammoniation, when scars are badly cracked, or when dark and aggregating more than 1 inch in diameter, or when light-colored and detracting from the appearance of the fruit to a greater extent than 1 inch of dark ammoniation.	No change.	N/A.
(b) Creasing, when causing the skin to be seriously weakened.	(b) Creasing, when it very seriously weakens the skin, or extends over practically entire fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(c) Dryness or mushy condition, when mushy or distinctly dry to a depth of more than one-quarter inch in all segments at the stem end or the equivalent of this amount, by volume, of mushy condition or dryness when occurring in any portion of the fruit.	(c) Dryness or mushy condition when affecting all segments more than one-half inch at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	We propose to change this definition to be more consistent with other citrus standards.
(d) Pitting, when it very seriously affects the appearance or the shipping quality of the fruit.	(d) Skin breakdown, when aggregating more than 25 percent of the fruit surface.	We propose to delete the term ''pitting'' and replace it with ''skin breakdown.'' Skin breakdown is a defect included in other citrus standards to encompass several similarly appearing defects, including ''pitting.'' We also propose to include an objective scoring guide for this defect, rather than retain the scoring guide based on the ''general definition.''
(e) Scale, when it very seriously affects the appearance of the fruit.	(e) Scale, when aggregating more 25 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(f) Sprayburn, when it very seriously affects the appearance of the fruit.	(f) Sprayburn, when aggregating more than 25 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(g) Sunburn, when it very seriously affects the appearance of the fruit.	(g) Sunburn, when aggregating more than 25 percent of the fruit surface.	We propose to change this definition to be more consistent with other citrus standards.
(h) Unsightly discoloration, when the fruit has a very objectionable appearance caused by any means. The color or the pattern of the discoloration, or a combination of both, or a combination of defects may cause the fruit to have a very unsightly appearance.	Delete.	We propose to delete the term ''unsightly discoloration'' to eliminate the confusion with ''discoloration''. The defect ''discoloration'' is defined in Section 51.1785. No definition for ''unsightly discoloration'' exists in the standards.
(i) Melanose, when caked to the extent that the appearance of the fruit is very seriously affected.	No change.	N/A.
(j) Scars, when so deep, rough, or so unsightly that the appearance of the fruit is very seriously injured.	No change.	N/A.
	(k) Buckskin, when aggregating more than 25 percent of the fruit surface.	We propose to add this definition to be more consistent with other citrus standards.
	(l) Scab, when aggregating more than 25 percent of fruit surface.	We propose to add this definition to be more consistent with other citrus standards.
	(m) Green spots or oil spots, when the appearance aggregates more than 25 percent of the fruit surface.	We propose to add this definition to be more consistent with other citrus standards.
	(n) Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo and juice sacs are ruptured causing a mushy condition affecting all segments more than ½ inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	We propose to add this definition to be more consistent with other citrus standards.
§ 51.1793 Cull. A cull is a fruit which does not meet the requirements of U.S. No. 3 grade.	No Change	N/A.
	Note: All references in this standard to area, aggregating area, or length are based on a tangerine 2½ inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	In the current standard, it is unclear whether defects are based on a specific size fruit, or if greater areas on larger fruit and lesser areas on smaller fruit are allowed. We propose the addition of this statement to clarify the issue. This procedure is in place in most fruit and vegetable standards.

Current standard	Proposed	Discussion
United States Standards for Grades of Lemons		
''U.S. No. 1'' consists of lemons which are firm, fairly well formed (unless specified as well formed), reasonably smooth (unless specified as smooth), which have stems which are properly clipped, and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, growth cracks, internal decline (endoxerosis), red blotch, membranous stain or other internal discoloration, and free from damage caused by bruises, dry or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, scab, melanose, dirt, or other foreign material, other disease, insects or other means.	''U.S. No. 1'' consists of lemons which are mature, firm, fairly well formed, fairly smooth, which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, growth cracks, internal decline (endoxerosis), red blotch, membranous stain or other internal discoloration, and free from damage caused by bruises, dry or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, scab, skin breakdown, melanose, dirt, or other foreign material, other disease, insects or other means.	We propose to add the term ''mature'' to coincide with the proposed deletion of the juice content requirements. Please refer to the section on Juice Content found on page 104. ''Mature'' is the accepted term used to describe a stage of development desired by industry. This definition is consistent with other citrus standards. We propose to delete the phrase ''unless specified as well formed'', and to delete the reference to ''stems which are properly clipped.'' These terms are obsolete and do not reflect what is grown and packed for today's marketplace. We propose to change the term ''reasonably smooth (unless specified as smooth)'' to ''fairly smooth'' to be consistent with other standards. Generally speaking, the modifier ''fairly'' when used in fruit and vegetable standards, denotes a more stringent or higher requirement than ''reasonably.'' We also propose to add ''free from damage by skin breakdown.'' This defect is currently being scored based on the ''general definition'' and is not specified in the current standards.
(a) Color: The lemons are fairly well colored (unless specified as well colored): Provided, That any lot of lemons which meets all the requirements of this grade except those relating to color may be designated as ''U.S. No. 1 Green'' if the lemons are of a full green color, or as ''U.S. No. 1 Mixed Color'' if the lemons fail to meet the color requirements of either ''U.S. No. 1'' or ''U.S. No. 1 Green.'' (See ''Tolerances'')	(a) Color: The lemons are fairly well colored. (See ''Tolerances'')	We propose to delete the term ''unless specified as well colored.'' Current industry practice is to pack at least fairly well colored fruit in all grades. We also propose to delete the reference to ''U.S. No. 1 Green'' and ''U.S. No. 1 Mixed Color.'' These grades are obsolete and no longer packed by industry.
(b) Lemons have the juice content specified in ''Juice Content'' section.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of ''mature.'' Please refer to the section on Juice Content found on page 104.
''U.S. Export No. 1'' consists of lemons which are firm, fairly well formed, reasonably smooth and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, exanthema, growth cracks, internal discoloration and free from damage caused by bruises and dryness or mushy condition.	''U.S. Export No. 1'' consists of lemons which are mature, firm, fairly well formed, fairly smooth and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, exanthema, growth cracks, internal discoloration and free from damage caused by bruises and dryness or mushy condition.	We propose to add the term ''mature'' to coincide with the proposed deletion of the juice content requirements. Please refer to the section on Juice Content found on page 104. ''Mature'' is the accepted term used to describe a stage of development desired by industry. This definition is consistent with other citrus standards. We also propose to change the term ''reasonably smooth'' to ''fairly smooth'' to be consistent with other standards. Generally speaking, the modifier ''fairly'', when used in fruit and vegetable standards, denotes a more stringent or higher requirement than ''reasonably.''
(a) At least 50 percent of the lemons are free from damage caused by scars, oil spots, scale, sunburn, peteca, scab, melanose, dirt or other foreign material, other disease, insects or other means, and the remainder of the lemons are free from serious damage by any cause.	(a) At least 50 percent of the lemons are free from damage caused by scars, oil spots, scale, sunburn, peteca, scab, skin breakdown, melanose, dirt or other foreign material, other disease, insects or other means, and the remainder of the lemons are free from serious damage by any cause.	We propose to add ''free from damage by skin breakdown.'' This defect is currently being scored based on the ''general definition'' and is not specified in the current standards.
(b) Color: Lemons are moderately well colored. (See ''Tolerances'')	No change.	N/A.

Current standard	Proposed	Discussion
(c) Lemons have a juice content of not less than 28 percent by volume.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of ''mature.'' Please refer to the section on Juice Content found on page 104.
''U.S. Combination'' consists of a combination of U.S. No. 1 and U.S. No. 2 lemons: Provided, That at least 40 percent, by count, of the lemons meet the requirements of U.S. No. 1 grade.	''U.S. Combination'' consists of a combination of U.S. No. 1 and U.S. No. 2 lemons: Provided, That at least 40 percent, by count, of the lemons in each lot shall meet the requirements of the U.S. No. 1 grade. (See ''Tolerances'')	We have re-worded this section to include the phrase ''* * * in each lot * * *'' to be consistent with other standards in this Notice.
(a) Color: The lemons are fairly well colored (unless specified as well colored): Provided, That any lot of lemons which meets all the requirements of this grade except those relating to color may be designated as ''U.S. Combination Green'' if the lemons are of a full green color, or as ''U.S. Combination Mixed Color'' if the lemons fail to meet the color requirements of either ''U.S. Combination'' or ''U.S. Combination Green.'' (See ''Tolerances'')	(a) Color: The lemons are fairly well colored. (See ''Tolerances'')	We propose to delete the term ''unless specified as well colored.'' Current industry practice is to pack at least fairly well colored fruit all grades. We also propose to delete the reference to ''U.S. Combination Green'' and ''U.S. Combination Mixed Color.'' These grades are obsolete and no longer packed by industry.
(b) Lemons have the juice content specified in ''Juice Content'' section.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of ''mature.'' Please refer to the section on Juice Content found on page 104.
''U.S. No. 2'' consists of lemons which are fairly firm, which are reasonably well formed and fairly smooth, which have stems which are properly clipped, and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, internal decline (endoxerosis), and red blotch, and free from serious damage caused by bruises, membranous stain or other internal discoloration, dryness or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, growth cracks, scab, melanose, dirt or other foreign material, other diseases, insects or other means.	''U.S. No. 2'' consists of lemons which are mature, fairly firm, which are reasonably well formed and reasonably smooth, which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, internal decline (endoxerosis), and red blotch, and free from serious damage caused by bruises, membranous stain or other internal discoloration, dryness or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, growth cracks, scab, skin breakdown, melanose, dirt or other foreign material, other diseases, insects or other means.	We propose to add the term ''mature'' to coincide with the proposed deletion of the juice content requirements. Please refer to the section on Juice Content found on page 104. ''Mature'' is the accepted term used to describe a stage of development desired by industry. This definition is consistent with other citrus standards. We propose to change the term ''fairly smooth'' to ''reasonably smooth'' to be consistent with other standards. Generally speaking, the modifier ''fairly'' when used in fruit and vegetable standards, denotes a more stringent or higher requirement than ''reasonably.'' It is consistent with other standards to place the less stringent requirement in the lower grade. We propose to delete the reference to ''stems which are properly clipped.'' This reference is obsolete and does not reflect what is packed for today's marketplace. We propose to add ''free from serious damage by skin breakdown.'' This defect is currently being scored based on the ''general definition'' and is not specified in the current standards.
(a) Color: The lemons are fairly well colored (unless specified as well colored): Provided, That any lot of lemons which meets all of the above requirements of this grade except those relating to color may be designated as ''U.S. No. 2 Green'' if the lemons are of a full green color, or as ''U.S. No. 2 Mixed Color'' if the lemons fail to meet the color requirements of either ''U.S. No. 2'' or ''U.S. No. 2 Green.'' (See ''Tolerances'')	(a) Color: The lemons are fairly well colored. (See ''Tolerances'')	We propose to delete the term ''unless specified as well colored.'' Current industry practice is to pack at least fairly well colored fruit in all grades. We also propose to delete the reference to ''U.S. No. 2 Green'' and ''U.S. No. 2 Mixed Color.'' These grades are obsolete and no longer packed by industry.
(b) Lemons have the juice content specified in''Juice Content'' section.	Delete.	We propose this deletion because it will no longer be needed due to the proposed addition of ''mature.'' Please refer to the section on Juice Content found on page 104.

Current standard	Proposed	Discussion
''Unclassified'' consists of lemons which have not been classified in accordance with any of the foregoing grades. The term ''unclassified'' is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.	Delete.	When changing or updating standards in recent years, references to ''Unclassified'' have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that ''Unclassified'' is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated.
''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:	''Tolerances.'' In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:	The proposed addition of the phrase ''a minimum 25 count sample'' establishes a basis for uniform sampling. Other citrus standards (Florida), at industry's request, have recently been changed to include the minimum 25 count sample. This would make the citrus standards more uniform regarding sampling. This change is also consistent with the industry's request.
(a) U.S. No. 1 grade—(1) For defects. Not more than 10 percent of the lemons in any lot may fail to meet the requirements of this grade, but not more than one-half of this tolerance, or 5 percent, shall be allowed for decay, contact spot, internal evidence of Alternaria development, internal decline (endoxerosis), unhealed broken skins, growth cracks, and other defects causing serious damage, including not more than one-tenth of this latter amount, or one-half of 1 percent, for lemons affected by decay at shipping point: Provided, That an additional tolerance of 2½ percent, or a total of not more than 3 percent, shall be allowed for lemons affected by decay en route or at destination.	(a) U.S. No. 1 grade—(1) For defects at shipping point. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. In addition, not more than 10 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade, included in this amount not more than 5 percent shall be allowed for defects causing serious damage, included in this latter amount not more than 1 percent for decay.	We propose to establish separate ''Shipping Point'' tolerances to be consistent with other fruit and vegetable standards. A ''whole number'' decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of ''not more than one-half of 1% may be a confusing concept to an industry which is accustomed to ''whole'' percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors ''round up'' percentages ending in .5 or more and ''round down'' those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.
(2) For color. Not more than 10 percent of the lemons in any lot may fail to meet the requirements relating to color.	''U.S. No. 1 grade.'' For defects en route or at destination. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or 7 percent for defects causing serious damage, including therein not more than 5 percent for serious damage by permanent defects and not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be more consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.

Current standard	Proposed	Discussion
(b) U.S. No. 2 and U.S. Combination grades—(1) For defects. Not more than 10 percent of the lemons in any lot may fail to meet the requirements of the U.S. No. 2 grade, but not more than one-half of this tolerance, or 5 percent, shall be allowed for decay, contact spot, internal evidence of Alternaria development, and internal decline (endoxerosis), including not more than one-fifth of this latter amount, or 1 percent, for lemons affected by decay at shipping point: Provided, That an additional tolerance of 2 percent, or a total of not more than 3 percent, shall be allowed for lemons affected by decay en route or at destination.	U.S. No. 2 grade—(1) For defects at shipping point. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. in addition, not more than 10 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade, included in this amount not more than 5 percent shall be allowed for decay, contact spot, internal evidence of alternaria development, and internal decline (endoxerosis), included in this latter amount not more than 1 percent for decay.	We propose to establish separate ''Shipping Point'' tolerances to be consistent with other fruit and vegetable standards A ''whole number'' decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of ''not more than one-half of 1% may be a confusing concept to an industry which is accustomed to ''whole'' percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors ''round up'' percentages ending in .5 or more and ''round down'' those less than .5. The current citrus standards included in this Notice are an exception to this procedure. changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.
(2) For color. Not more than 10 percent of the lemons in any lot may fail to meet the requirements relating to color.	''U.S. No. 2 grade.'' For defects en route or at destination. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements relating to color. In addition, not more than 12 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 7 percent shall be allowed for decay, contact spot, internal evidence of Alternaria development, and internal decline (endoxerosis), included in this latter amount, not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
	U.S. Combination grade. For defects at shipping point. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 10 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade, included in this amount not more than 5 percent shall be allowed for decay, contact spot, internal evidence of Alternaria development, and internal decline (endoxerosis), included in this latter amount not more than 1 percent for decay.	We propose to establish separate ''Shipping Point'' tolerances to be consistent with other fruit and vegetable standards. A ''whole number'' decay tolerance is also proposed, which is included in practically all other fresh fruit and vegetable grade standards. The current decay tolerance of ''not more than one-half of 1% may be a confusing concept to an industry which is accustomed to ''whole'' percentage numbers on inspection certificates. Normally, when dealing with defect percentages ending in fractional amounts, AMS inspectors ''round up'' percentages ending in .5 or more and ''round down'' those less than .5. The current citrus standards included in this Notice are an exception to this procedure. Changing the one-half of 1 percent tolerance to 1 percent will eliminate industry's confusion on this issue and mirror what is currently contained in many fruit and vegetable standards. We have also re-worded the entire section for clarity.

Current standard	Proposed	Discussion
	''U.S. Combination grade.'' For defects en route or at destination. Not more than 10 percent, by count, of the lemons in any lot may fail to meet the requirements of the U.S. No. 2 grade relating to color. In addition, not more than 12 percent, by count, of the lemons in any lot may fail to meet the remaining requirements of the U.S. No. 2 grade: Provided, that included in this amount not more than the following percentages shall be allowed for defects listed: 10 percent for fruit having permanent defects; or not more than 7 percent shall be allowed for decay, contact spot, internal evidence of Alternaria development, and internal decline (endoxerosis), included in this latter amount, not more than 3 percent for decay.	We propose to establish ''En Route or At Destination'' tolerances to be consistent with other fruit and vegetable standards. This proposal includes adding separate tolerances for permanent defects; for any defects causing serious damage; and for total defects. The decay tolerance, which remains at 3 percent, is re-worded for clarity.
(3) When applying the tolerance for U.S. Combination grade individual packages may have not more than 10 percent less than the percentage of U.S. No. 1 required: Provided, That the entire lot averages within the required percentage.	''U.S. Combination.'' For defects at shipping point and en route or at destination. No part of any tolerance shall be allowed to reduce for the lot as a whole, the 40 percent of U.S. No. 1 lemons required in the U.S. Combination grade, but individual samples may have not less than 30 percent of U.S. No. 1 required: Provided, That the entire lot averages within the percentage required.	We propose to re-word this section to make it consistent with other fruit and vegetable standards including those listed in this Notice.
(c) U.S. Export No. 1. (1) For defects: 10 percent for lemons which fail to meet the requirements of the grade: Provided, That not more than the following percentages of the defects enumerated shall be allowed: 1 percent for decay; 3 percent for contact spot; 3 percent for broken skins which are not healed; 3 percent for growth cracks; 3 percent for internal evidence of Alternaria development; 3 percent for internal discoloration; 5 percent for soft; and, 5 percent for damage by dryness or mushy condition.	No change.	N/A.
(2) For color: 10 percent for lemons which fail to meet the requirements relating for color.	No change.	N/A.
(3) The contents of individual containers may have not more than 10 percentage points less than the percentage specified to meet the requirements in ''U.S. Export No. 1 grade:'' Provided, That no container shall have more than double the percentage specified for any one of the defects enumerated in U.S. Export No. 1 tolerances for defects section above.	(3) The contents of samples may have not more than 10 percentage points less than the percentage specified to meet the requirements in the ''U.S. Export No. 1 grade:'' Provided, That no sample shall have more than double the percentage specified for any one of the defects enumerated in U.S. Export No. 1 tolerances for defects section above.	Use of the term ''sample'' is used in this section to reflect the proposed revision from ''container'' as listed throughout this Notice.
''Juice content.'' Lemons in the U.S. No. 1, U.S. Combination and U.S. No. 2 grades shall have a juice content of not less than 30 percent, by volume, except when designated as ''U.S. No. 1 Green for Export,'' U.S. Combination Green for Export,'' or ''U.S. No. 2 Green for Export.'' When so designated, the lemons shall have a juice content not less than 28 percent, by volume.	Delete.	We propose to delete all references to ''Juice Content.'' Due to advances in agricultural practices this is no longer a concern. We propose to substitute the term ''Mature'' to define a stage of desirable ripeness and marketability. Use of this term is consistent with practically all fruit and vegetable standards.
''Application of tolerances.'' (a) Except when applying the tolerances for ''Condition Standards for Export,'' and the tolerances set forth in the U.S. Export No. 1 defect tolerances, the contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: Provided, That the averages for the entire lot are within the tolerance specified for the grade:	''Application of tolerances.'' Individual samples, based on a minimum 25 count sample, are subject to the following limitations, unless otherwise specified. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.	We propose to change the standards to include minimum 25 count samples, not ''packages.'' This is consistent with the recently-changed Florida Citrus Standards. Individual sample tolerances are also proposed to reflect the language and tolerances widely used in other fruit and vegetable standards.

Current standard	Proposed	Discussion
(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed lemon may be permitted in any package.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.
(2) For packages which contain 10 pounds or less, individual packages in the lot are not restricted as to the percentage of defects: Provided, That not more than one lemon which is seriously damaged by dryness or mushy condition may be permitted in any package and, in addition, en route or at destination not more than 10 percent of the packages may have more than one decayed lemon.	Delete.	We propose this deletion because the reference to various size package restrictions from the current standard would no longer be valid with a minimum 25 count sample.
''Standard pack.'' (a) Lemons shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.	''Standard pack.'' (a) Lemons shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods.	We propose to delete the reference to ''wrapped fruit'' because the industry no longer packs fruit in this manner.
(b) All such containers shall be tightly packed as well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When lemons are packed in standard nailed boxes, each box shall have a minimum bulge of 1¼ inches; when packed in cartons or in wirebound boxes, each container shall be at least level full at time of packing.	(b) All such containers shall be tightly packed as well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When packed in cartons each container shall be at least level full at time of packing.	We propose to delete the reference to ''nailed boxes'' because they are no longer used by the industry.
(c) ''Fairly uniform in size'' means that when lemons are packed for 165 carton count or smaller size, or equivalent sizes when packed in other containers, not less than 90 percent, by count, of the lemons in any container shall be within a diameter range of four-sixteenths inch; when packed for sizes larger than 165 carton count, or equivalent sizes packed in other containers, not less then 90 percent, by count, of the lemons in any container shall be within a diameter range of six-sixteenths inch.	No change.	N/A.
(1) ''Diameter'' means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.	No change.	N/A.
(d) In order to allow for variations incident to proper packing the following tolerances are provided:	No change.	N/A.
(1) 10 percent for wrapped fruit in any container which fails to meet the requirement pertaining to wrapping; and,	Delete.	We propose to delete the reference to ''wrapped fruit'' because the industry no longer packs fruit in this manner.
(2) 5 percent for containers in any lot which fail to meet the requirements for standard pack.	(2) 5 percent for samples in any lot which fail to meet the requirements for standard pack.	We propose to change the word ''containers'' to ''samples'' to be consistent with the proposed sampling method for grade determination.
(b) In order to allow for variations incident to proper packing, not more than 5 percent of the containers in any lot may fail to meet the requirements of standard sizing and fill.	(b) In order to allow for variations incident to proper packing, not more than 5 percent of the samples in any lot may fail to meet the requirements of standard sizing and fill.	We propose to change the word ''containers'' to ''samples'' to be consistent with the proposed sampling method for grade determination.

Current standard	Proposed	Discussion
''Condition standards for export.'' (a) Not more than a total of 10 percent, by count, of the lemons in any container may be soft, affected by decay or contact spot, or have broken skins which are not healed, growth cracks, internal evidence of Alternaria development, internal decline (endoxerosis), or serious damage by membranous stain or other internal discoloration, or dryness or mushy condition, except that not more than the following percentages of the defects enumerated shall be allowed: (1) one-half of 1 percent for decay; (2) 3 percent for contact spot; (3) 3 percent for broken skins which are not healed; (4) 3 percent for growth cracks; (5) 3 percent for internal evidence of Alternaria development; (6) 3 percent for internal decline (endoxerosis); (7) 5 percent for soft; (8) 5 percent for serious damage by membranous stain or other internal discoloration; and,	''Condition standards for export.'' (a) Not more than a total of 10 percent, by count, of the lemons in any sample may be soft, affected by decay or contact spot, or have broken skins which are not healed, growth cracks, internal evidence of Alternaria development, internal decline (endoxerosis), or serious damage by membranous stain or other internal discoloration, or dryness or mushy condition, except that not more than the following percentages of the defects enumerated shall be allowed: (1) one-half of 1 percent for decay; (2) 3 percent for contact spot; (3) 3 percent for broken skins which are not healed; (4) 3 percent for growth cracks;	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
(9) 5 percent for serious damage by dryness or mushy condition.	No change.	N/A.
''(b) Any lot of lemons shall be considered as meeting the condition standards for export if not more than a total of 10 percent, by count, of the lemons in any container have defects enumerated in the condition standards for export: Provided, That no sample shall have more than double the percentage specified for any one of the defects enumerated.	(b) Any lot of lemons shall be considered as meeting the condition standards for export if not more than a total of 10 percent, by count, of the lemons in any sample have defects enumerated in the condition standards for export: Provided, That no sample shall have more than double the percentage specified for any one of the defects enumerated.	We propose to change the word ''container'' to ''sample'' to be consistent with the proposed sampling method for grade determination.
''Firm'' means that the fruit does not yield more than slightly to moderate pressure.	No change.	N/A.
''Fairly well formed'' means that the fruit shows normal characteristic lemon shape and is not materially flattened on one side. Lemons having moderately thickened necks at the stem end shall be considered as fairly well formed unless the appearance is materially affected.	No change.	N/A.
''Well formed'' means that the fruit is typically normal in shape with well centered stem and stylar ends.	No change.	N/A.
''Reasonably smooth'' means that the appearance of the lemon is not materially affected by protrusions or lumpiness of the skin or by grooves or furrows. Coarse pebbling is an indication of good keeping quality and is not objectionable.	''Fairly smooth'' means that the appearance of the lemon is not materially affected by protrusions or lumpiness of the skin or by grooves or furrows. Coarse pebbling is an indication of good keeping quality and is not objectionable.	We propose to change the definition of ''Reasonably smooth'' to ''Fairly smooth'' to be consistent with other fruit and vegetable standards. Generally speaking, the modifier ''fairly'' when used in fruit and vegetable standards, denotes a more stringent or higher requirement than ''reasonably.''
''Smooth'' means that the skin is of fairly fine grain and that there are no more than slight furrows radiating from the stem end.	No change.	N/A.
''Contact spot'' means an area on the lemon which bears evidence of having been in contact with decay or mold.	No change.	N/A.
''Internal evidence of Alternaria development'' includes red or brown staining of the tissue under the button in the core, or in the fibrovascular bundles.	No change.	N/A.
''Membranous stain'' is a brown or dark discoloration of the walls of the fruit segment.	No change.	N/A.

Current standard	Proposed	Discussion
''Damage'' means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or edible or shipping quality of the fruit. The following specific defects shall be considered damage:	No change.	N/A.
''(a) Dryness or mushy condition when affecting all segments of the fruit more than one-fourth inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.
''(b) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type;	No change.	N/A.
''(1) Scars which are very dark and which have an aggregate area exceeding that of a circle one-fourth inch in diameter;	No change.	N/A.
''(2) Scars which are dark, rough or deep and which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
''(3) Scars which are fairly light in color, slightly rough, or with slight depth and which have an aggregate area exceeding that of a circle 1 inch in diameter; and,	No change.	N/A.
''(4) Scars which are light in color, fairly smooth, with no depth and which have an aggregate area of more than 20 percent of the fruit surface.	No change.	N/A.
''(c) Oil spots (Oleocellosis or similar injuries) which are more than slightly depressed, soft, or which have an aggregate area exceeding that of a circle one-half inch in diameter;	No change.	N/A.
(d) Scale when more than ten medium to large California red or purple scale adjacent to button at stem end or scattered over fruit or any scale which affects the appearance of the fruit to a greater extent;	No change.	N/A.
(e) Sunburn which causes appreciable flattening of the fruit, drying of the skin, material change in color of the skin, appreciable drying of the flesh underneath the affected area or affects more than 25 percent of the fruit surface;	No change.	N/A.
(f) Hollow core which causes the fruit to feel distinctly spongy; and,	No change.	N/A.
(g) Peteca when more than two spots or when having an aggregate area exceeding that of a circle one-fourth inch in diameter.	No change.	N/A.
	Bruising when segment walls are collapsed, or albedo and juice sacs are ruptured.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	Skin breakdown when exceeding that of a circle ¼ inch in diameter.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
''Fairly well colored'' means that the area of yellow color exceeds the area of green color on the fruit.	No change.	N/A.
''Well colored'' means that the fruit is yellow in color with not more than a trace of green color. Fruit of a decided bronze color shall not be considered well colored.	No change.	N/A.
''Fairly firm'' means that the fruit may yield to moderate pressure but is not soft.	No change.	N/A.

Current standard	Proposed	Discussion
''Reasonably well formed'' means that the fruit is not decidedly flattened, does not have a very long or large neck and is not otherwise decidedly misshapen.	No change.	N/A.
''Fairly smooth'' means that the skin is not badly folded, badly ridged, or very decidedly lumpy.	''Reasonably smooth'' means that the skin is not badly folded, badly ridged, or very decidedly lumpy.	We propose to change the definition of ''fairly smooth'' to ''reasonably smooth'' to be consistent with other standards. Generally speaking, the modifier ''fairly,'' when used in fruit and vegetable standards, denotes a more stringent or higher requirement than ''reasonably.'' It is consistent with other standards to place the less stringent requirement in the lower grade.
''Serious damage'' means any specific defect described in this section; or an equally objectionable variation of any of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as serious damage:	No change.	N/A.
(a) Membranous stain, or other internal discoloration which seriously affects the appearance of the cut fruit;	No change.	N/A.
(b) Dryness or mushy condition when affecting all segments of the fruit more than one-half inch at the stem end or more than the equivalent of the amount, by volume, when occurring in other portions of the fruit;	No change.	N/A.
(c) Scars (including sprayburn and fumigation injury) which exceed the following aggregate area of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:	No change.	N/A.
(1) Scars which are very dark and which have an aggregate area of more than 5 percent of the fruit surface;	No change.	N/A
(2) Scars which are dark, rough or deep, and which have an aggregate area of more than 10 percent of the fruit surface;	No change.	N/A.
(3) Scars which are fairly light in color, slightly rough or of slight depth, and which have an aggregate area of more than 25 percent of the fruit surface; and,	No change.	N/A.
(4) Scars which are light in color, fairly smooth, with no depth, and which have an aggregate area of more than 50 percent of the fruit surface;	No change.	N/A.
(d) Oil spots (Oleocellosis or similar injuries) which are soft, or which have an aggregate area exceeding that of a circle 1 inch in diameter;	No change.	N/A.
(e) Scale when California red or purple scale is concentrated as a ring or blotch, or more than thinly scattered over the fruit surface, or any scale which affects the appearance of the fruit to a greater extent;	No change.	N/A.
(f) Sunburn which causes decided flattening of the fruit, marked drying or dark discoloration of the skin, material drying of the flesh underneath the affected area, or which affects more than one-third of the fruit surface;	No change.	N/A.
(g) Hollow core which causes the fruit to feel excessively spongy;	No change.	N/A.
(h) Peteca when more than five small spots, or when having an aggregate area exceeding that of a circle three-fourths inch in diameter; and,	No change.	N/A.
(i) Growth cracks that are leaking, gummy or not well healed.	No change.	N/A.

Current standard	Proposed	Discussion
	Bruising when fruit has been split open, peel is badly watersoaked following bruising or albedo is ruptured causing a mushy condition affecting all segments more than 1/2 inch at the bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
	Skin breakdown when exceeding that of a circle 5/8 inch in diameter.	This defect is currently being scored based on the ''general definition.'' We propose to add specific scoring criteria for objective treatment of this defect.
''Moderately well colored'' means that the area of greenish-yellow or yellow color exceeds the area of green color on the fruit.	No change.	N/A.
	Note: All references in this standard to area, aggregating area, or length are based on a lemon 2 inches in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.	In the current standard, it is unclear whether defects are based on a specific size fruit, or if greater areas on larger fruit and lesser areas on smaller fruit are allowed. We propose the addition of this statement to clarify the issue. This procedure is in place in most fruit and vegetable standards.

Authority: 7 U.S.C. 1621–1627.

Dated: June 8, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–15290 Filed 6–16–99; 8:45 am]

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Federal Register

Thursday
June 17, 1999

Part IV

Department of The Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

50 CFR 13 and 17

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances; Announcement of Final Safe Harbor Policy; Announcement of Final Policy for Candidate Conservation Agreements With Assurances; Final Rule and Notices

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR 13 and 17

RIN 1018–AD95

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule contains the U.S. Fish and Wildlife Service's (Service) final regulatory changes to Part 17 of Title 50 of the Code of Federal Regulations (CFR) necessary to implement two final policies developed by the Service and the National Marine Fisheries Service (NMFS) under the Endangered Species Act (Act)—the Safe Harbor and the Candidate Conservation Agreement with Assurances policies published in today's **Federal Register**. NMFS will develop separate regulatory changes to implement these policies.

This rule also contains several amendments to parts 13 and 17 of title 50 of the CFR that alter the applicability of the Service's general permitting regulations in 50 CFR part 13 to permits issued under section 10 of the Act for Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

DATES: This rule is effective July 19, 1999.

ADDRESSES: To obtain copies of the final rule or for further information, contact Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C., 20240 (Telephone 703/358–2171, Facsimile 703/358–1735).

FOR FURTHER INFORMATION CONTACT: Richard Hannan, Acting Chief, Division of Endangered Species (Telephone (703/358–2171), Facsimile (703/358–1735)).

SUPPLEMENTARY INFORMATION: These final regulations and the background information regarding the final rule apply to the U.S. Fish and Wildlife Service only. Therefore, the use of the terms Service and ''we'' in this notice refers exclusively to the U.S. Fish and Wildlife Service. The proposed rule on Safe Harbor Agreements and Candidate Conservation Agreements with Assurances was issued on June 12, 1997 (62 FR 32189). We revised the proposed rule based on public comments we received, because of further consideration of the proposed rule, and to reflect the revisions to the Safe Harbor and Candidate Conservation Agreements with Assurances policies the rule is intended to implement (see Final Safe Harbor and Candidate Conservation Agreements with Assurances policies published in today's **Federal Register**). This rule does not finalize the proposed changes to part 13 that were published on September 5, 1995 (60 FR 46087), which are still pending.

Background

The Service administers a variety of conservation laws that authorize the issuance of certain permits for otherwise prohibited activities. In 1974, we published 50 CFR part 13 to consolidate the administration of its various permitting programs. Part 13 established a uniform framework of general administrative conditions and procedures that would govern the application, processing, and issuance of all Service permits. We intended the general part 13 permitting provisions to be in addition to, and not in lieu of, other more specific permitting requirements of Federal wildlife laws.

Subsequent to the 1974 publication of part 13, we added many wildlife regulatory programs to Title 50 of the CFR. For example, we added part 18 in 1974 to implement the Marine Mammal Protection Act, modified and expanded part 17 in 1975 to implement the Act, and added part 23 in 1977 to implement the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). These parts contained their own specific permitting requirements in addition to the general permitting provisions of part 13.

In most instances, the combination of part 13's general permitting provisions and part 17's specific Act permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the Act, the ''one size fits all'' approach of part 13 is inappropriately constraining and narrow. These three areas involve Habitat Conservation Planning, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

Congress amended section 10(a)(1) of the Act in 1982 to authorize incidental take permits associated with Habitat Conservation Plans (HCP). Many HCP permits involve long-term conservation commitments that run with the affected land for the life of the permit or longer. We negotiate such long-term permits recognizing that a succession of owners may purchase or resell the affected property during the term of the permit. The Service does not view this as a problem, where the requirements of such permits run with the land and successive owners agree to the terms of the HCP. Property owners similarly do not view this as a problem so long as we can easily transfer incidental take authorization from one purchaser to another.

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its citizens. We do not view this as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

The above HCP scenarios are not easily reconcilable with certain sections of part 13. For example, 50 CFR sections 13.24 and 13.25 impose significant restrictions on permit right of succession or transferability. While these restrictions are well justified for most wildlife permitting situations, they impose inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP foresee the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under their jurisdiction.

Similar problems also could arise in attempting to apply the general part 13 permitting requirements to permits issued under part 17 to implement Safe Harbor or Candidate Conservation Agreements with Assurances. A major incentive for property owner participation in the Safe Harbor or Candidate Conservation programs is the long-term certainty the programs provide, including the certainty that the incidental take authorization will run with the land if it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could view the present limitations in several sections (e.g., sections 13.24 and 13.25) as impediments to the development of these Agreements.

The proposed rule would have addressed these potential problems by revising section 13.3, the Scope of Regulations provision in part 13, to provide that the specific provisions in a particular HCP, Safe Harbor, or Candidate Conservation Agreement permit and associated documents would control whenever they were in conflict with the general provisions of the part 13 regulations. After further consideration, we have determined that it is more appropriate to address these potential conflicts by promulgating revisions to parts 13 and 17 that identify the specific instances in which the

permit procedures for HCP, Safe Harbor, and Candidate Conservation Agreement permits will differ from the general part 13 permit procedures. For a fuller discussion of these revisions to parts 13 and 17, see ''Description of the Final Rule,'' below.

It is important to note that we proposed other amendments to section 13.3 on September 5, 1995 (60 FR 46087). Those changes would, among other things, provide an explanation of the term ''permit'' needed to refer correctly to CITES requirements, state the scope of part 13's requirements clearly, and ensure that the up-to-date titles of several parts of 50 CFR are used. However, the September 5, 1995, proposal did not deal with the potential conflicts between the general provisions included in part 13 and the specific provisions for incidental take and enhancement of survival permits under part 17. This final rule does not amend the language included in the September 5, 1995, proposal which is still pending.

Finally, we also proposed to add four new sub-sections to part 17 that would govern the issuance of endangered or threatened species ''enhancement of survival'' permits under section 10(a)(1)(A) of the Act for activities conducted under Safe Harbor or Candidate Conservation Agreements with Assurances.

Overview of Safe Harbor Agreement and Candidate Conservation Agreement With Assurances Programs

The information below briefly describes these two programs. For more details on these two programs, see the two final policies also published in today's **Federal Register**.

Much of the nation's current and potential habitat for listed, proposed, and candidate species exists on property owned by private citizens, States, municipalities, Tribal governments, and other non-Federal entities. Conservation efforts on non-Federal lands are critical to the long-term conservation of many declining species. More importantly, a collaborative stewardship approach is critical for the success of such an initiative. Many property owners would be willing to manage their lands voluntarily to benefit fish, wildlife, and plants, especially those that are declining, provided that they are not subjected to additional regulatory restrictions as a result of their conservation efforts. Beneficial management could include actions to maintain habitat or improve habitat (e.g., restoring fire by prescribed burning, restoring properly functioning hydrological conditions). Property owners are particularly concerned about land-use restrictions that might result if listed species colonize their lands or increase in numbers or distribution because of the property owners' conservation efforts, or if species subsequently become listed as a threatened or endangered species. The potential for future restrictions has led many property owners to avoid or limit land or water management practices that could enhance or maintain habitat and benefit or attract fish and wildlife that are listed or may be listed in the future.

The purpose of the Safe Harbor Policy is to ensure consistency in the development of Safe Harbor Agreements. Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting federally listed species. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property-use restrictions if their efforts attract listed species to their properties or increase the numbers or distribution of listed species already present on their properties. We will closely coordinate development of Safe Harbor Agreements with the appropriate State fish and wildlife or other agencies and any affected Native American Tribal governments. Collaborative stewardship with State fish and wildlife agencies is particularly important given the critical partnership between the Service and the States in recovering listed species.

The ultimate goal of Candidate Conservation Agreements with Assurances is, to remove enough threats to the covered species to preclude any need to list them as threatened or endangered under the Act. Proposed and candidate species may be the subject of a Candidate Conservation Agreement. Certain other unlisted species that are likely to become a candidate or proposed species in the near future may also be the subject of a Candidate Conservation Agreement. These Agreements are different from Safe Harbor Agreements (which involve the presence of at least one listed species) in that they provide conservation benefits exclusively to candidate and proposed species of fish, wildlife, and plants. The substantive requirements of activities carried out under Candidate Conservation Agreements with Assurances, if undertaken on a broad enough scale by other property owners similarly situated, should be expected to preclude any need to list species covered by the Agreement as threatened or endangered under the Act.

Summary of Proposed Rule

As discussed above, the proposed rule issued on June 12, 1997 (62 FR 32189), would have revised section 13.3, the Scope of Regulations provision in part 13, to provide that the specific provisions in a particular HCP, Safe Harbor, or Candidate Conservation Agreement permit and associated documents would control whenever they were in conflict with the general provisions of the part 13 regulations. The proposed rule also would have added four new subsections to 50 CFR part 17. These subsections would govern the issuance of ''enhancement of survival'' permits under section 10(a)(1)(A) of the Act for activities conducted under Safe Harbor Agreements or Candidate Conservation Agreements with Assurances for endangered species (50 CFR 17.22(c) and (d), respectively), and threatened species (50 CFR 17.32(c) and (d), respectively). These sub-sections were designed to ensure consistent application of the Safe Harbor Agreements and Candidate Conservation Agreements with Assurances programs, and are the legal mechanism for us to provide the necessary assurances to non-Federal landowners participating in these programs. Permits issued to provide assurances for activities to be conducted under a Candidate Conservation Agreement with Assurances only become effective upon the effective date of a final rule listing any of the covered species as threatened or endangered.

Summary of Received Comments

We received only two specific comments related to the proposed regulations, although more than 300 letters were received regarding the policies these regulatory changes are intended to implement. This final rule reflects changes needed to implement the final policies, which were revised to address comments received on the proposed policies. We address here only the two comments directly related to these regulations. For detailed discussions of the issues raised by commenters relative to the policies and the Service's responses, please refer to the final policies also published in today's **Federal Register**.

Issue 1. A commenter raised concerns regarding the opportunity for public review of permits issued under 50 CFR part 17. 22(c)(1) [Safe Harbor permits] and 17.22(d)(1) [Candidate Conservation Agreement with Assurances permits] for species listed as endangered.

Response 1. The proposed rule did not reduce the opportunity for public involvement in the issuance of these permits. The commenter apparently was unaware that all applications for permits issued under 50 CFR 17.22 (permits for species listed as endangered) are already required to undergo public review and comment. ''Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application'' (50 CFR 17.22). Therefore, it is clear that the current regulations governing these permits already require public review and comment on permit applications filed, and to add a specific review requirement for these permits would be redundant. The commenter was probably confused by the inclusion of specific public review requirements for threatened species permits issued under 50 CFR part 17.32 (c)(1) [Safe Harbor permits] and 17.32 (d)(1) [Candidate Conservation Agreement permits]. In contrast to 50 CFR 17.22, 50 CFR 17.32 generally does not require public review and comment on permits, although the specific provisions for threatened species incidental take permits do require such notice and comment (see 50 CFR 17.32 (b)(1)(ii)). To ensure an open and public process for the evaluation and issuance of permits to provide assurances to non-Federal landowners participating under the Safe Harbor and Candidate Species Conservation Agreements with Assurances policies, we have included similar public review requirements for these permits. The inclusion of these new provisions under 50 CFR 17.32 (c)(2) and 50 CFR 17.32 (d)(2) will ensure ample and meaningful public participation in this process.

Issue 2. Several commenters expressed concerns regarding the inability of landowners to terminate both Safe Harbor Agreements and Candidate Conservation Agreements with Assurances/Permits before their expiration dates, especially since these are voluntary Agreements.

Response 2. We agree that it is reasonable to include ''early-out'' provisions in these Agreements and in this final rule. We acknowledge that in some circumstances, such as family illnesses, financial hardships, and economically profitable ventures, landowners may need to terminate Agreements prior to their expiration dates. The final rule has been revised to provide for such opportunities, while ensuring that the agreed upon baseline conditions are not eroded and that we have an opportunity to translocate affected individuals of covered species.

Revisions to the Proposed Rule

The regulations have been revised to accommodate needs identified during the public review and comment period. This accommodation will facilitate our implementation of these programs and participation by interested non-Federal landowners. The proposed rule provided that the specific provisions in a particular HCP, Safe Harbor, or Candidate Conservation Agreement permit and associated documents would control whenever they were in conflict with the provisions of the general part 13 permit regulations. The final rule instead includes specific revisions to parts 13 and 17 that identify the particular instances in which the permit procedures for HCP, Safe Harbor, and Candidate Conservation Agreement permits will differ from the general part 13 permit procedures. For a fuller discussion of these revisions to parts 13 and 17, see ''Description of the Final Rule,'' below. The final rule also includes a provision to allow for the termination of an Agreement and permit prior to their expiration dates. Because of the voluntary nature of the Safe Harbor Agreements and Candidate Conservation Agreements with Assurances, it is appropriate to provide these ''early-out'' options to program participants. Based on our past experience with voluntary habitat management programs (e.g., Partners for Fish and Wildlife), we expect that only a minor fraction of all participating landowners will invoke this option. We require ''early-out'' participants to provide us with prior notification. This will facilitate our ability to translocate any potentially affected individuals of a covered species. In addition, the final rule reflects revisions needed to implement revisions in the final Safe Harbor and Candidate Conservation Agreements with Assurances policies. For a full description of these revisions, see the final Safe Harbor and Candidate Conservation Agreements with Assurances policies published in today's **Federal Register**.

Description/Overview of the Final Rule

The final rule codifies minimum permit requirements and conditions that must be met in order for participating non-Federal landowners to receive the assurances under a Safe Harbor or a Candidate Species Conservation Agreement with Assurances. These permits, issued under 50 CFR part 17, are for activities to be voluntarily conducted under a Safe Harbor Agreement and/or a Candidate Conservation Agreement with Assurances.

As discussed above, the final rule does not adopt the proposal to amend section 13.3 to clarify that the specific provisions of an HCP, Safe Harbor Agreement, or Candidate Conservation Agreement would control wherever they conflict with the general permit provisions of part 13. We did not receive any public comments on this proposal, including any comments objecting to the proposal. However, we decided instead to include in the final rule specific amendments to parts 13 and 17 that will dictate when the permitting requirements for HCP, Safe Harbor, and Candidate Conservation Agreement permits will vary from the general part 13 requirements. We believe these amendments will achieve the proposal's purpose of avoiding potential conflicts between these permits and the general part 13 requirements, while more clearly informing potential applicants and the interested public of the ways in which the requirements for HCP, Safe Harbor, and Candidate Conservation Agreement permits differ from the general permit requirements. The specific changes are as follows:

1. Section 13.21(b)(4) generally prevents the Service from issuing a permit for an activity that ''potentially threatens a wildlife or plant population.'' This is unnecessary and might even be confusing for HCPs, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances, since the HCP and Candidate Conservation Agreement with Assurances permit issuance criteria already incorporate a requirement that the permitted activity cannot be likely to jeopardize the continued existence of a species and since Safe Harbor Agreement permits must meet a net benefit test. The final rule therefore revises the HCP permit issuance criteria in sections 17.22(b)(2) and 17.32(b)(2) to except HCP permits from section 13.21(b)(4) and includes in the final Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permit regulations a similar exception from section 13.21(b)(4).

2. Section 13.23(b)(4) generally reserves to the Service the right to amend permits ''for just cause at any time.'' The final rule revises this provision to clarify that the Service's reserved right to amend HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits must be exercised consistently with the assurances provided to HCP, Safe Harbor Agreement, and Candidate Conservation

Agreement with Assurances permit holders in their permits and in the HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permit regulations.

3. Section 13.24 is revised in the final rule to provide a more streamlined approach to rights of succession for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits and section 13.25 is revised to provide for greater transferability of these permits. As explained in the proposed rule, the restrictions sections 13.24 and 13.25 impose on permit succession and transferability are justified for most wildlife permitting situations, but they are inappropriate and unnecessary for HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. These permits may involve substantial long-term conservation commitments, and the Service negotiates such long-term permits recognizing that there may be succession or transfer in ownership during the term of the permit. Revised sections 13.24 and 13.25 allow this as long as the successor or transferor owners meet the general qualifications for holding the permit and agree to the terms of the HCP, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances. Under revised section 13.25(d), any person under the direct control of a State or local governmental entity that has been issued a permit may carry out the activity authorized by the permit if (1) they are under the jurisdiction of the governmental entity and the permit provides that they may carry out the authorized activity, or (2) they have been issued a permit by the governmental entity or executed a written instrument with the governmental entity pursuant to the terms of an implementing agreement.

4. The final rule adds a new subparagraph (7) to sections 17.22(b) and 17.32(b) to make clear that HCP permittees remain responsible for mitigation required under the terms of their permits even after surrendering their permits. We have required this approach in many HCPs. The general provision in section 13.26 is silent on this issue and could have been interpreted as not requiring any further actions after surrender of an incidental take permit, even if mitigation were owed under the terms of the permit for take that had already occurred.

5. The final rule modifies the permit revocation criteria in section 13.28(a) to provide that the section 13.28(a)(5) criterion shall not apply to HCP, Safe Harbor Agreement, and Candidate Conservation Agreement with Assurances permits. The Service determined that it would be more appropriate to refer instead to the statutory issuance criterion in 16 U.S.C. 1539(a)(2)(B)(iv) that prohibits the issuance of an incidental take permit unless the Service finds the permit is not likely to jeopardize the continued existence of the species. The final rule therefore includes in the specific regulations for HCP permits a provision (sections 17.22(b)(8) and 17.32(b)(8)) that allows a permit to be revoked if continuing the permitted activity would be inconsistent with 16 U.S.C. 1539(a)(2)(B)(iv). The final rule also includes similar provisions in the Safe Harbor Agreement and Candidate Conservation Agreement with Assurances regulations.

In keeping with the ''No Surprises'' rule (sections 17.22(b)(5)–(6) and 17.32(b)(5)–(6)) these provisions would allow the Service to revoke an HCP permit as a last resort in the narrow and unlikely situation in which an unforeseen circumstance results in likely jeopardy to a species covered by the permit and the Service has not been successful in remedying the situation through other means. The Service is firmly committed, as required by the No Surprises rule, to utilizing its resources to address any such unforeseen circumstances. These principles would also apply to Safe Harbor Agreement and Candidate Conservation Agreement with Assurances permits.

6. The final rule revises section 13.50 to allow more flexibility where the permittee is a State or local governmental entity, and has thus taken a leadership role and assists in implementation of the permit program.

The four new sub-sections under 50 CFR part 17 are designed to ensure consistent application of the Safe Harbor Agreements and Candidate Conservation Agreements with Assurances programs. These regulatory changes are the legal mechanism for the Service to provide the necessary assurances to non-Federal landowners participating in these programs.

Required Determinations

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act

The final rule was subject to Office of Management and Budget (OMB) review under Executive Order 12866.

a. The final rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

b. The final rule will not create inconsistencies with other agencies' actions. The final rule establishes completely voluntary programs for non-Federal property owners. These programs are not available to Federal agencies. Because Safe Harbor Agreements and Candidate Conservation Agreements with Assurances are entered into voluntarily, the final rule does not create inconsistencies with the actions of non-Federal agencies.

c. The final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. The final rule follows the policy direction set forth in the March 1995 Administration's 10-point plan for an effective and efficient implementation of the Act. In that plan the Administration set the precedent and the policy direction for the implementation of the Act. Specifically, various proposals have been published which provides incentives for non-Federal property owners to conserve species. More importantly, these proposals call for removing the disincentives that implementation of some provisions of the Act may have inadvertently imposed on non-Federal property owners.

The Department of the Interior certifies that the final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). E.O. 12866, 5 U.S.C. 601 *et seq.* and 5 U.S.C. 801 *et seq.* require that an agency assess the economic effects of a rule. One way to address this is to determine whether a credible upper bound for the effects of the rule is less than $100 million.

We take that approach below by first determining the maximum number of Candidate Conservation Agreements with Assurances that the Service's budget allows it to process in a year, and then seeing whether this number of agreements could reasonably be expected to generate $100 million of effects annually.

The Service's Candidate Conservation Program budget for FY 1999 is approximately $6.7 million. This funding covers candidate assessment activities, development of traditional Candidate Conservation Agreements (without assurances), development and implementation of other candidate conservation actions, and development of Candidate Conservation Agreements with Assurances. The 1999 funding level for the Candidate Conservation

Program represents an increase of $1 million over the 1998 level. Some of the additional monies were anticipated to be used to increase capabilities for existing functions. However, for purposes of this analysis we will assume that the entire $1 million is available for development of Candidate Conservation Agreements with Assurances.

The average time required for a Service biologist to develop a Candidate Conservation Agreement with Assurances and process a Section 10(a)(1)(A) permit application is estimated to be about one month. Using an average cost index of $10,000 per employee month and adding an additional $5,000 to cover travel, management review, publication in the **Federal Register**, and other associated costs brings the total cost for development of an average Candidate Conservation Agreement with Assurances to $15,000. Therefore, the Service could fund the development of approximately 67 Candidate Conservation Agreements with Assurances per year at the FY 1999 funding level.

For there to be $100 million of effects from the 67 Candidate Conservation Agreements with Assurances, on average a Candidate Conservation Agreement with Assurances would have to generate approximately $1.5 million in benefits. Since we expect the participants in the program to be relatively small entities, this is not a credible number for the effect of the average Candidate Conservation Agreement with Assurances.

The Service's budget for FY 1999 included $5 million for a new activity, the Private Landowner Incentive Program. This funding covers the development of Safe Harbor Agreements. About half of the money will be used to fund Service personnel to work with landowners to develop Safe Harbor Agreements; the remaining funds will serve as financial assistance incentives to participating landowners.

The average time required for a Service biologist to develop a Safe Harbor Agreement and process a Section 10(a)(1)(A) permit application is estimated to be about one month. Using an average cost index of $10,000 per employee month and adding an additional $5,000 to cover travel, management review, publication in the **Federal Register**, and other associated costs brings the total cost for development of an average Safe Harbor Agreement to $15,000. Therefore, the Service could fund the development of approximately 67 Safe Harbor Agreements per year at the FY 1999 funding level.

For there to be $100 million of effects from the 67 Safe Harbor Agreements, on average a Safe Harbor Agreement to generate approximately $1.5 million in benefits. Since we expect the participants in the program to be relatively small entities, this is not a credible number for the effect of the average Safe Harbor Agreement.

The final rule is not a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

a. The final rule will not produce an annual economic effect of $100 million.

b. The final rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because property owners will voluntarily enter into Safe Harbor Agreements and Candidate Conservation Agreements with Assurances only when the effects are positive, the final rule will not increase costs or prices.

c. The final rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Because property owners will voluntarily enter into Safe Harbor Agreements and Candidate Conservation Agreements with Assurances only when the effects are positive, the final rule will not result in adverse effects.

All non-Federal entities—individuals, small businesses, large corporations, State and local agencies, and private organizations—are eligible to participate in Safe Harbor Agreements and Candidate Conservation Agreements with Assurances. Although there may be some corporate property owners interested in developing Safe Harbor Agreements and Candidate Conservation Agreements with Assurances, based on prior experience we expect most participating properties will be family-owned farms and ranches. We do not expect that all Candidate Conservation Agreements with Assurances or Safe Harbor Agreements would be geographically concentrated to the degree that small entities in one particular area would be most affected. The impact on small ownerships is expected to be economically insignificant because most of these costs are on a per acre basis. There will also not be enough Safe Harbor Agreements or Candidate Conservation Agreements with Assurances in any given year or in any given area to lead to a substantial impact on a significant number of small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The final rule will not impose a cost of $100 million or more in any given year on State, local or Tribal governments or private entities. No additional information will be required from a non-Federal entity solely as a result of the final rule. Since the final rule establishes a completely voluntary program, there are no incremental costs being imposed on non-Federal landowners.

b. The final rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings Implication Assessment

The Service has determined that this rule has no potential takings of private property implications as defined by Executive Order 12630. The primary reason for this determination is that this rule provides two voluntary programs that do not require individuals to participate unless they volunteer to do so.

Federalism Assessment

This final rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, the Service has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Civil Justice Reform

The Department of the Interior has determined that this final rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The Service has examined this final rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with incidental take permits other than those already approved for incidental take permits with OMB approval #1018–0094, which has an expiration date of February 28, 2001.

National Environmental Policy Act

The Department of the Interior has determined that the issuance of the rule

is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

Section 7 Consultation

The Service does not need to complete a section 7 consultation on this final rule. An intra-Service consultation is completed prior to issuing enhancement of survival permits under 10(a)(1)(A) of the Endangered Species Act associated with individual Safe Harbor Agreements and Candidate Conservation Agreements with Assurances.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, we amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations, as set forth below:

PART 13—[AMENDED]

The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a; 704, 712; 742j–l; 1382; 1538(d); 1539, 1540(f); 3374; 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

2. Section 13.23(b) is revised to read as follows:

§ 13.23 Amendment of permits.

* * * * *

(b) The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that any such amendment of a permit issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter shall be consistent with the requirements of § 17.22(b)(5), (c)(5) and (d)(5) or § 17.32(b)(5), (c)(5) and (d)(5) of this subchapter, respectively.

* * * * *

3. Section 13.24 is revised to read as follows:

§ 13.24 Right of succession by certain persons.

(a) Certain persons other than the permittee are authorized to carry on a permitted activity for the remainder of the term of a current permit, provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to qualify for the authorization provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

(c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter B, the successor's authorization under the permit is also subject to a determination by the Service that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as the Service determines is relevant to the processing of the request.

4. Section 13.25 is revised to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

(a) Except as otherwise provided for in this section, permits issued under this part are not transferable or assignable.

(b) Permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as the Service determines is relevant to the processing of the submission.

(c) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

(d) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter to a State or local governmental entity, any person who is under the direct control of the permittee may carry out the activity authorized by the permit where:

(1) The person is under the jurisdiction of the permittee and the permit provides that such person(s) may carry out the authorized activity; or

(2) The person has been issued a permit by the governmental entity or has executed a written instrument with the governmental entity, pursuant to the terms of the implementing agreement.

5. Section 13.28(a)(5) is revised to read as follows:

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

6. Section 13.50 is revised to read as follows:

§ 13.50 Acceptance of Liability.

Except as otherwise limited in the case of permits described in § 13.25(d), any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

PART 17—[AMENDED]

7. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

8. Section 17.22 is amended by revising paragraph (b)(2), adding new paragraphs (b)(7) and (b)(8), redesignating paragraph (c) as paragraph (e), and adding new paragraphs (c) and (d) as follows:

§ 17.22 Permits for scientific purposes, enhancements of propagation or survival, or for incidental taking.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for Revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.21. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement will provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in paragraph (c)(5) (ii) of this section (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a) (1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in § 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as endangered and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as an endangered species. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement will be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on the effective date of a final rule that lists a covered species as endangered.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional

restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

* * * * *

9. Section 17.32 is amended by revising (b)(2) by adding (b)(7) and (b)(8), and adding new paragraphs (c) and (d) as follows:

§ 17.32 Permits—general.

* * * * *

(b) * * *

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general issuance criteria in 13.21(b) of this subchapter, except for 13.21(b)(4), and shall issue the permit if he or she finds that:

(A) The taking will be incidental;

(B) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;

(C) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;

(D) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(E) The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and

(F) He or she has received such other assurances as he or she may require that the plan will be implemented.

(ii) In making his or her decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

* * * * *

(7) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permit shall be deemed canceled only upon a determination by the Service that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take shall be authorized under the terms of the surrendered permit.

(8) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* The applicant must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed action is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.31. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization;

(iii) A Safe Harbor Agreement that complies with the requirements of the Safe Harbor policy available from the Service; and

(iv) The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (c). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (c).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Safe Harbor Agreement;

(ii) The implementation of the terms of the Safe Harbor Agreement will provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit and the Safe Harbor Agreement otherwise complies with the

Safe Harbor policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a Safe Harbor Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Safe Harbor Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the Safe Harbor Agreement.

(5) *Assurances provided to permittee.* (i) The assurances in subparagraph (ii) of this paragraph (c)(5) apply only to Safe Harbor permits issued in accordance with paragraph (c)(2) of this section where the Safe Harbor Agreement is being properly implemented, and apply only with respect to species covered by the Agreement and permit. These assurances cannot be provided to Federal agencies. The assurances provided in this section apply only to Safe Harbor permits issued after July 19, 1999.

(ii) If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, for the affected species and maintain the original terms of the Safe Harbor Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Safe Harbor Agreement without the consent of the permittee.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Safe Harbor Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (c) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the Safe Harbor Agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* The applicant must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). When a species covered by a Candidate Conservation Agreement with Assurances is listed as threatened and the applicant wishes to engage in activities identified in the Agreement and otherwise prohibited by § 17.31, the applicant must apply for an enhancement of survival permit for species covered by the Agreement. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as a threatened species. The applicant must submit an official Service application form (3–200.54) that includes the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization; and

(iii) A Candidate Conservation Agreement that complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service.

(iv) The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (d). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (d).

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director shall consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if he or she finds:

(i) The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement;

(ii) The Candidate Conservation Agreement complies with the requirements of the Candidate Conservation Agreement with Assurances policy available from the Service;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations;

(v) Implementation of the terms of the Candidate Conservation Agreement will be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a Candidate Conservation Agreement;

(ii) A requirement for the property owner to notify the Service at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the Candidate Conservation Agreement.

(4) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a Candidate Conservation Agreement on the effective date of a final rule that lists a covered species as threatened.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (d)(5) apply only to permits issued in accordance with paragraph (d)(2) where the Candidate Conservation with Assurances Agreement is being properly implemented, and apply only with respect to species adequately covered by the Candidate Conservation with Assurances Agreement. These assurances cannot be provided to Federal agencies.

(i) *Changed circumstances provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Agreement's operating conservation program, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Agreement's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Agreement without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Agreement's operating conservation program for the affected species, and maintain the original terms of the Agreement to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the Agreement;

(*3*) Percentage of range conserved by the Agreement;

(*4*) Ecological significance of that portion of the range affected by the Agreement;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a Candidate Conservation with Assurances Agreement.

(7) *Criteria for revocation.* A permit issued under this paragraph (d) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in paragraph (d)(2)(iii) of this section and the inconsistency has not been remedied in a timely fashion.

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to enable the Director to determine that the benefits of the conservation measures in the Agreement, when combined with those benefits that would be achieved if it is assumed that the conservation measures would also be implemented on other necessary properties, would preclude or remove any need to list the species covered by the Agreement.

Dated: May 11, 1999.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife, and Parks, Department of the Interior.

[FR Doc. 99–15255 Filed 6–11–99; 5:08 pm]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Final Safe Harbor Policy

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), (jointly referred to as the ''Services'') announce a final Safe Harbor policy under the Endangered Species Act of 1973, as amended (Act). This policy provides incentives for private and other non-Federal property owners to restore, enhance, or maintain habitats for listed species. Because many endangered and threatened species occur exclusively, or to a large extent, on non-Federally owned property, the involvement of non-Federal property owners in the conservation and recovery of listed species is critical to the eventual success of these efforts. Under the policy, the Services will provide participating property owners with technical assistance to develop Safe Harbor Agreements (Agreements) that manage habitat for listed species, and provide assurances that additional land, water, and/or natural resource use restrictions will not be imposed as a result of their voluntary conservation actions to benefit covered species. When the property owner meets all the terms of the Agreement, the Services will authorize incidental taking of the covered species at a level that enables the property owner ultimately to return the enrolled property back to agreed upon baseline conditions. The Services will closely coordinate with the appropriate State agencies and any affected Native American Tribal governments before entering into Agreements. The Services considered and evaluated all the comments received on the draft policy in developing this final policy. Additionally, the FWS is publishing elsewhere in this issue of the **Federal Register** a final rule that contains the necessary regulatory changes to implement this policy.

DATES: This policy is effective July 19, 1999.

ADDRESSES: To obtain copies of the final Safe Harbor policy contact the Chief, Division of Endangered Species, Fish and Wildlife Service, 452 ARLSQ, Washington, D.C. 20240 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Richard Hannan, Acting Chief, Division of Endangered Species, Fish and Wildlife Service (Telephone (703)358–2171) or Margaret Lorenz, Policy Coordinator, Endangered Species Division, National Marine Fisheries Service (Telephone (301) 713–1401).

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1997, the Services issued a draft policy (62 FR 32178), and the FWS issued proposed regulations to implement the policy (62 FR 32189). With this policy, the Services intended to facilitate the conservation of listed species through a collaborative approach with non-Federal citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners which are stakeholders in the conservation of these species. With the proposed policy and the related regulations, the Services intended to create incentives for non-Federal property owners to implement conservation measures for certain listed species by providing certainty with regard to possible future land, water, or resource use restrictions should the covered species later become more numerous as a result of the property owners actions. Non-Federal property owners, who through a Safe Harbor Agreement commit to implement voluntary conservation measures for a listed species will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the covered species become more numerous as a result of the property owners' actions.

Much of the nation's current and potential fish and wildlife habitat is on property owned by private citizens, States, municipalities, Tribal governments, and other non-Federal entities. Conservation efforts on non-Federal property are critical to the survival and recovery of many endangered and threatened species. The Services strongly believe that a collaborative stewardship approach to the proactive management of listed species involving government agencies (Federal, State, and local) and the private sector is critical to achieving the ultimate goal of the Endangered Species Act (Act): recovery of threatened and endangered species. The recovery of certain species can benefit from short-term and mid-term enhancement, restoration, or maintenance of terrestrial and aquatic habitats on non-Federal property. The ''Safe Harbor'' approach provides an avenue to garner the non-Federal landowners' support for species conservation on non-Federal lands.

Many property owners are willing to voluntarily manage their property to benefit listed fish and wildlife, provided these beneficial actions do not result in new restrictions being placed on the future use of their property. Beneficial management includes actions to enhance, restore, or maintain habitat (e.g., restoring habitat through prescribed burning, restoring hydrological conditions) so that it is suitable for listed species. Because such proactive management actions cannot be mandated or required by the Act, failure to conduct these activities would not violate any of the Act's provisions. Although property owners recognize the benefits of proactive habitat conservation activities to help listed species, some are still concerned that additional land, water, and/or natural resource use restrictions may result if listed species colonize their property or increase in numbers or distribution due to their conservation efforts. Their concern centers on the applicability of the Act's section 9 ''take'' prohibitions if listed species occupy their property, as a result of their conservation-oriented property management actions. Landowners whose properties support endangered or threatened species as a result of their positive, voluntary conservation efforts might violate section 9 of the Act if they significantly develop, modify, or manage those properties in a way that subsequently causes incidental take of those species.

Section 9 of the Act prohibits the ''take'' of listed fish and wildlife species, which is defined in section 3(18) to include, among other things, killing, harming or harassing. The Act's implementing regulations, as promulgated by the FWS (50 CFR 17.3), and proposed by NMFS (63 FR 24148) define ''harm'' to include ''significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding and sheltering.''

This final Safe Harbor policy encourages property owners to voluntarily conserve threatened and endangered species without the risk of

further restrictions pursuant to section 9 of the Act. Previously, the FWS has provided Safe Harbor type assurances to non-Federal property owners based on various authorities under the Act, including incidental take statements under section 7(a)(2) and incidental take permits under section 10(a)(1)(B). After further consideration of such alternatives and an evaluation of other provisions of the Act, the Services have determined that the section 10(a)(1)(A) ''enhancement of survival'' permit provisions provide the best mechanism to carry out a permanent Safe Harbor policy that provides the necessary assurances to participating property owners, while also providing conservation benefits to the covered species. For landowners who are participants in other Federal programs (e.g., Farm Bill or Partners for Fish and Wildlife programs), FWS is in the process of developing an appropriate process to provide assurances on a programmatic basis to the landowners as long as a net conservation benefit is achieved for listed species covered by the Agreements. Assurances already provided by FWS under sections 7 or 10(a)(1)(B) would still be valid, and revision of those Agreements is unnecessary. Finalizing this policy provides national consistency in the development of Safe Harbor Agreements (Agreements) and links the policy to an expanded ''enhancement of survival'' permit program through section 10(a)(1)(A) of the Act.

FWS has also published final regulations to implement this policy in today's **Federal Register**. This final policy and final rule provides the FWS procedures to implement the Safe Harbor policy. NMFS will develop and propose regulatory changes to implement this policy at a later date. These regulations will govern the issuance of ''enhancement of survival'' permits under section 10(a) (1)(A) of the Act to provide the assurances to participating landowners through Safe Harbor Agreements.

Summary of the Draft Policy

The draft Safe Harbor policy (62 FR 32178) encouraged non-Federal landowners to maintain or enhance existing endangered species habitat, to restore listed species' habitats, or to manage their lands in a manner that benefits listed species that would be covered by an agreement. In return, the Services would provide assurances that future activities would *not* be subject to the Act's restrictions beyond those restrictions applicable to the property at the time of enrollment in the program. The draft policy recognized that many non-Federal landowners are interested in restoring, enhancing, and/or maintaining natural habitats on their lands, thus potentially benefiting listed species. However, non-Federal landowners' willingness may be hindered by a fear that the Services will enforce section 9 due to their beneficial actions, their lands are colonized by listed species, or listed species' numbers increase.

The draft policy contained provisions protecting any listed species covered by an Agreement and occupying a landowner's property at the time of enrollment in the program by including them in the baseline conditions. If species were included in the baseline conditions, an ''incidental take'' would not be allowed. However, if the numbers or range of those covered species increases because of voluntary conservation measures conducted in accordance with a Safe Harbor Agreement, the landowner would be authorized to incidentally ''take'' those individuals above the baseline without penalty. These arrangements would be formalized through a streamlined permitting process and an Agreement or similar instrument between the landowner and the Services. The draft policy also considered a streamlined process where the Services would issue a blanket permit to an appropriate agency or organization that would in turn issue ''Certificates of Inclusion'' or ''Participation Certificates'' to landowners. The ultimate goal of the draft policy was to encourage non-Federal landowners to voluntarily implement beneficial management actions for those listed species that occur on their lands or would be attracted as a result of the beneficial management actions.

Summary of Comments Received

The Services received more than 70 comment letters on the draft policy from a wide variety of entities, including Federal, State and County agencies, industry, conservation groups, coalitions, and private individuals. The Services considered all relevant information and recommendations received during the public comment period. Some of the commenters addressed issues that were applicable to the implementing regulations as well as the draft policy. Both the final policy and regulations have been amended, where appropriate.

The following is a summary of the comments on the draft policy and the Services' responses.

Issue 1. Many commenters expressed concern regarding the appropriateness of the Services entering into Safe Harbor Agreements and suggested that the Services provide guidance on how to determine whether a Safe Harbor Agreement is appropriate and under what circumstances the Services would enter into such Agreements.

Response 1. The Services agree that Safe Harbor Agreements may not be appropriate for all types of species in all situations. If a property owner is taking a listed species and needs an immediate ''incidental take'' authorization, application for and development of a Habitat Conservation Plan (HCP) and issuance of an incidental take permit under section 10(a)(1)(B) would be more appropriate. Safe Harbor Agreements also are not appropriate in situations that do not meet the net conservation benefit standards of this policy. The Services will determine on a case-by-case basis whether or not a particular proposed Agreement actually meets the standards of the Safe Harbor policy and its implementing regulations and whether a Safe Harbor Agreement would be an appropriate means of enhancing the survival of the species covered by an agreement. For example, translocating individuals from a habitat preserved in perpetuity to a site with zero baseline condition may not achieve a net conservation benefit for the species. This is because the habitat the species is using could be altered or destroyed, which would put the species at risk. Each Agreement will have an appropriate public review and comment period, and after considering all available information, the Services will determine if the permit can be issued.

Issue 2. Commenters stated that the concept of baseline and how baseline conditions will be determined needs to be clarified. Some commenters also provided recommendations on how to determine baseline conditions.

Response 2. The Services acknowledge that the concept of baseline determination needs further clarification, and because of its crucial importance to the overall implementation and success of this policy, the discussion of this concept is expanded. The Services also further clarify how baseline conditions should be determined, the intent of the Services in determining baseline conditions, and the implications of these determinations. The intent of the Services in determining baseline conditions is to ensure that the protection provided to covered listed species is not eroded below current levels. The intent is to provide participating landowners with a clear understanding of their assured rights to return enrolled lands to conditions existing prior to the Agreement (i.e.,

baseline conditions) and what expectations exist for all participants in terms of performance under the Agreement.

Issue 3. Numerous commenters raised concerns regarding the determination of baseline conditions based on the number of individuals of a listed species occupying or using the enrolled lands. These concerns are based on the fact that population numbers of a species in the wild often fluctuate naturally (e.g., between years and between seasons). If, for example, the baseline was established as the number of individual animals present during a period of naturally high abundance, a participating landowner could be interpreted to be in non-compliance with the Agreement if they returned the enrolled lands to baseline when population numbers were naturally low, when in fact the available habitat area remained unchanged and the landowner took no action that violated the Agreement.

Response 3. The Services intend to provide flexibility during implementation of the policy by providing that baseline conditions will be mutually agreed upon by the participating landowner and the Services, and will be determined by using either population numbers of listed species or occupied habitat acreage, or both. The known or expected seasonal or natural variation of population numbers should be described in the Agreement and will help form the baseline determination of the enrolled lands. Similarly, if occupied habitat is used to determine baseline, the quality, acreage, and characteristics of the habitat sustaining individuals of the covered species within the enrolled lands will be described and evaluated. The policy has been amended to address these concerns and to further clarify the section discussing baseline.

Issue 4. A number of commenters expressed concern regarding the land, water, and/or natural resource use that the enrolled lands would be returned to after the Agreement expires. Commenters were concerned whether such use would be compatible with maintaining the baseline conditions.

Response 4. Landowners who have complied with the terms of the Agreements and wish to use their lands in a manner different from their original use certainly retain the right to do so without any additional restrictions under the Act as long as the baseline is maintained. However, if the proposed use of the enrolled lands would result in incidental take of the species and is inconsistent with maintaining the baseline conditions, then separate authorization for such take would be required and is not covered by the Safe Harbor Agreement. In other words, the same land, water, and/or natural resource use restrictions that applied to the property prior to the Safe Harbor Agreement would still apply and the landowner would have to obtain the appropriate incidental take authorization under the appropriate provisions of the Act. If the baseline conditions were zero, based on the existence of unoccupied habitat, and these habitat areas became occupied as a result of the activities undertaken under the Agreement, no further authorization would be required. However, the Services would work with the landowner to relocate the species, if appropriate, before any habitat modification back to the baseline occurs, or extend the Agreement if the landowner so desires.

Issue 5. Numerous commenters supported the ''net conservation benefit'' standard in the policy. Commenters had significantly different interpretations of the meaning of ''net conservation benefit,'' however, and many requested further clarification of the concept.

Response 5. This crucial and fundamental principle of the Safe Harbor policy caused confusion and a number of different interpretations. Therefore, this section of the policy has been revised to clarify the Services' intent and the ''net conservation benefit'' concept. These net conservation benefits may result from reducing fragmentation and increasing the connectivity of habitats, maintaining or increasing populations, insuring against catastrophic events, enhancing and restoring habitats, buffering protected areas, and creating areas for testing and implementing new conservation strategies.

Issue 6. Several commenters requested clarification on how the Agreements can be terminated and what were the rights and responsibilities of the participating landowner.

Response 6. The length of Safe Harbor Agreements must be of sufficient duration to reasonably allow enough time to achieve the expected ''net conservation benefit'' for the listed species covered by the Safe Harbor Agreement. For example, if restoring suitable habitat for a species normally takes five years of active management, and the proposed Agreement is limited to providing suitable habitat for only three years, it would not be appropriate to enter into this Agreement. However, since these Agreements are voluntary, the Services recognize and respect the landowners' right to request early termination of their Agreements. The final Safe Harbor policy provides a mechanism to allow landowners to terminate their voluntary Agreements before the expiration date. The Services expect the number of landowners requesting early termination to be minimal based on the FWS's experience with the Partners for Fish and Wildlife Program.

Issue 7. Many commenters expressed concern that the proposed process for developing Agreements and issuing the necessary permit to provide the Safe Harbor assurances would be too cumbersome. Some commenters also suggested the Services should consider a ''blanket,'' ''master,'' or ''programmatic'' permitting process to further streamline the development of Safe Harbor Agreements.

Response 7. The process established in the draft Safe Harbor policy and implementing regulations was basically intended to address situations where a single landowner approaches the Services and is willing to conduct beneficial management actions on behalf of listed species, but is concerned regarding potential future section 9 limitations that could result from these voluntary actions. The draft Safe Harbor policy did not explicitly discuss the potential for using ''blanket,'' ''master,'' or ''programmatic'' permits to provide assurances to landowners interested in managing habitat for listed species on their property. However, the FWS has used a section 10(a)(1)(B) ''programmatic'' permit very successfully in the last few years. Clarifying language has been added to the final Safe Harbor policy and implementing regulations to allow for the possibility of using ''programmatic'' permits whenever appropriate. For example, the development of Statewide Safe Harbor programs, where a State agency or an appropriate entity acts as a permit holder and has the authority to include individual landowners through the issuance of ''Certificates of Inclusion'' or ''Participation Certificates,'' provides the perfect circumstance for the use of ''programmatic'' Safe Harbor Agreements and associated enhancement of survival permits. In the final policy, the Services recognize that significant conservation benefits on a landscape scale can be provided through these ''programmatic'' Safe Harbor Agreements and associated permits.

Issue 8. Several commenters expressed concern about the effects actions taken on enrolled lands may

have on neighboring non-enrolled lands and expressed the need for clarification.

Response 8. The Services recognize the implications to neighboring landowners of the successful implementation of management actions on enrolled lands. Further, the Services recognize and acknowledge that some landowners may be reluctant to initiate management actions that may have land, water, and/or natural resource use implications to neighboring landowners. The implications to neighboring landowners with non-enrolled lands will be assessed on a case-by-case basis. For example, when the Services believe that occupation of non-enrolled neighboring lands is likely, the Services will make every effort to include the neighboring landowner as a signatory party to the Agreement and to be included in the Safe Harbor Agreement and associated permit, thus extending the Safe Harbor assurances. For example, neighboring landowners of aplomado falcon (*Falco femoralis*) release sites in Texas were included in the permit for the Safe Harbor Agreement, in case that, as a result of the cooperators' actions, falcons inhabit their lands.

Issue 9. A number of commenters requested further clarification of the applicability of future section 7 consultations for Federal actions affecting the enrolled properties.

Response 9. Section 7 would continue to apply to Federal actions affecting the enrolled properties. However, if a participating landowner subsequently proposed an activity that required Federal approval (e.g., CWA section 404 permit) within the enrolled lands and such activity would not alter the status of the covered listed species below the original baseline conditions, as long as the activity does not diminish the baseline conditions, it is not likely that the species will be jeopardized. The ''no-jeopardy'' conclusion would be reached because the affected individuals of the species covered by the Agreement would be the same authorized to be taken under the Safe Harbor Agreement which the Services would already have found were ''takes'' that would not result in jeopardy under the issued section 10(a)(1)(A) permit. Furthermore, it will be the policy of the Services to include in the Biological Opinion ''reasonable and prudent measures'' necessary to minimize the expected incidental take which are identical to the terms and conditions included in the Safe Harbor Agreement and associated enhancement of survival permit issued to the participating landowner. Some commenters expressed concern regarding proposed Federal actions within the enrolled lands that are not initiated by the participating landowner (e.g., highway construction through condemnation of enrolled lands). Under these circumstances, normal section 7 compliance and procedures would apply and the necessary alternatives or measures to comply with section 7 may not be the same as those included in the Safe Harbor Agreement, regardless of whether take of covered species moves them below baseline.

Issue 10. Many commenters expressed concerns regarding the confidentiality of the information generated as a result of entering into these Agreements and the standards that this information will be subjected to before making decisions. Most commenters requested a commitment from the Services to keep all information regarding the development of Safe Harbor Agreements confidential.

Response 10. The Services recognize the landowners' concerns regarding privacy related to management actions they plan to implement on their lands and their desires to guard information regarding occupancy of listed species on their lands. However, the Act and its implementing regulations require an open and public process whenever permits are issued. Furthermore, the Services' implementation guidance and policy are to encourage an open process. Information used to make determinations for section 10 (a)(1)(A) permit issuance must be available for public review and comment. The Services are committed to ensuring an open and public approach to the implementation of this program.

Issue 11. A number of commenters felt that the draft policy should address how enrolled lands will be counted toward achieving recovery and the appropriateness of counting individuals covered under Safe Harbor Agreements toward recovery goals.

Response 11. Before entering into any Safe Harbor Agreement, the Services must make a written finding that all covered species would receive a net conservation benefit from management actions undertaken pursuant to the Agreement. Net conservation benefits contribute, directly or indirectly, to the recovery of the covered species, but this contribution toward recovery may be of varying duration and not permanent in nature, and the Services will not rely on these benefits by themselves as the basis to delist any species. Cumulatively, conservation benefits from Safe Harbor Agreements are likely to contribute to the recovery of a species over time by providing incentives to improve habitat or increase population numbers; reduce the effects of catastrophic events; provide buffers for protected areas; and establish areas for testing and developing new and innovative conservation strategies. Nevertheless, it would not be prudent to base delisting decisions solely on conservation benefits provided through Safe Harbor Agreements because of the ultimate right of a participating landowner to return their property to its original baseline condition.

Issue 12. Many commenters requested clarification and expressed concerns regarding the appropriateness of including unlisted species in these Agreements.

Response 12. Concurrently with this policy, the Services are publishing in the **Federal Register** of June 17, 1999, the final policy on Candidate Conservation Agreements with Assurances, which provides the opportunity to take action on behalf of declining species before listing becomes necessary. The Services acknowledge that situations may arise where a property owner may want to conserve numerous species, both listed and unlisted, on their property, and may want to enter into both a Safe Harbor and Candidate Conservation Agreement. The Services are considering methods to streamline and combine these two processes.

Issue 13. Many commenters stated that there was a need for monitoring standards and that the Services must ensure monitoring of Agreements.

Response 13. The Services recognize the need to develop and implement appropriate monitoring programs for the Safe Harbor Agreement to ensure that the ''net conservation benefits'' are being achieved. The monitoring of the implementation of the Safe Harbor Agreement will be part of the process to learn about the effectiveness of various conservation techniques and to ensure that the status of the species is not reduced below the original baseline condition. The scale and complexity of the Agreement may determine what additional monitoring is needed. However, monitoring standards are more appropriately generated in implementation guidance, which the Services are committed to developing in the near future with public review and comment. However, it is appropriate to include in the Safe Harbor policy certain guiding principles on the issue of monitoring and to provide general interim guidelines and the conceptual basis for the development of monitoring provisions.

Issue 14. Several commenters suggested that tax and financial incentives should be offered as part of

the regulatory assurances included in the draft policy.

Response 14. The Services agree that tax incentives or financial payments would also be effective in furthering voluntary actions by non-Federal landowners and would help defray the costs of implementing some of the necessary management activities. However, the Services do not have the authority to provide tax incentives without an express authorization from Congress. The Services' Ten Point-Plan for the fair implementation of the Act included a recommendation to Congress on these types of incentives as a way to garner additional support for voluntary management actions to benefit listed species. In addition, in fiscal year 1999, the FWS will initiate a pilot grant program to help provide some limited funding to participating landowners for the implementation of management activities under the auspices of signed Safe Harbor Agreements.

Issue 15. A few commenters requested further clarification regarding the need for National Environmental Policy Act (NEPA) compliance in terms of implementing the Safe Harbor program.

Response 15. The Services agree that NEPA compliance is necessary for the implementation of the Safe Harbor program. However, the Services expect that Safe Harbor Agreements/permits will provide benefits to covered listed species and their habitats and would have minor or no effects on other environmental values or resources. Because these permits can result in incidental take of individuals and/or habitats that would not exist but for these Agreements, and because current baseline conditions will be maintained under these Agreements, the Services expect that activities conducted within the Safe Harbor program would qualify for a categorical exclusion. Regardless of NEPA public review provisions, the Act's regulations to implement Safe Harbor Agreements and permits impose specific public review and comment requirements. For large-scale agreements that may encompass an entire State or a significant portion of the covered listed species' range, the Services are committed to preparing the necessary NEPA documentation.

Issue 16. A number of commenters inquired about the status of the necessary implementing regulations for the National Marine Fisheries Service.

Response 16. NMFS expects to amend its section 10(a)(1)(A) regulations to accommodate Safe Harbor Agreements in the next few months. Currently, NMFS does not have any approved Safe Harbor agreements and none are under consideration. However, we welcome inquiries on possible Agreements which would further the protection of listed species under NMFS' jurisdiction. The lack of revised 10(a)(1)(A) regulations should not discourage landowners from seeking an agreement with NMFS.

Issue 17. A number of commenters inquired about the interrelation, if any, between the Safe Harbor program and other Federal habitat restoration efforts and programs (e.g., Farm Bill related programs).

Response 17. The Services recognize that it would be beneficial if other Federal wildlife habitat restoration and/or enhancement programs also were able to provide Safe Harbor type assurances. Currently, the Services are exploring streamlined processes to provide Safe Harbor type assurances to non-Federal participants of these programs, some of which are implemented by other agencies of the Federal government (e.g., Farm Bill programs run by the Natural Resources Conservation Service). The Services are exploring potential possibilities to provide these Safe Harbor type assurances to the private landowners that participate in the Federal programs as long as the affirmative conservation mandates of Federal agencies are met.

Issue 18. Several commenters requested further clarification as to the duration of the assurances provided under the Safe Harbor program.

Response 18. In general, the assurances provided under the Safe Harbor program ''run with the land'' as long as the permit is effective and as long as the participating landowner is implementing the agreed upon terms of the Agreement and permit. The Services intend that the assurances will continue even after the ''net conservation benefit'' standard has been achieved, thus encouraging the landowner to maintain the benefits of the management actions and refrain from returning the land to baseline conditions at the end of the Agreement. If subsequent owners of the land are willing to sign a new Agreement, continue necessary management actions, and maintain the baseline once the net conservation benefit has been achieved, the assurances will continue. A permit that ''runs with the land'' provides the participating landowner (or subsequent landowner) with the option of not immediately returning his or her property back to its original baseline conditions. Clarifying language has been included in the final policy.

However, the Services are prepared as a last resort to revoke a permit implementing a Safe Harbor Agreement where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit, although the Services would first have to exercise all possible means to remedy such a situation prior to taking such a step.

Revisions to the Draft Policy

The following represents a summary of the revisions to the proposed policy as a result of the consideration of the public comments.

(1) The Services clarified how baseline should be determined and the implications of these determinations.

(2) The Services clarified the ''net conservation benefit'' language to indicate that the benefits should be reasonably expected to occur during the Agreement.

(3) The final Safe Harbor policy provides a mechanism to allow landowners to terminate their voluntary Agreements before the expiration date.

(4) The final Safe Harbor policy and implementing regulations establishes specific public review periods.

(5) The Services have clarified in the final policy how Safe Harbor Agreements are to be treated in determining the recovery of a listed species covered by such Agreements.

(6) The Services included in the final policy general interim guidelines regarding monitoring provisions for Safe Harbor Agreements.

(7) The Services clarified how they will address neighboring property owners to non-Federal property owners who receive Safe Harbor assurances.

Final Safe Harbor Policy

Part 1. What Is the Purpose of the Policy?

Because many endangered and threatened species occur exclusively, or to a large extent, upon privately owned property, the involvement of the private sector in the conservation and recovery of species is critical to the eventual success of these efforts. Private property owners are often willing to be partners in the conservation and recovery of listed fish, wildlife, and plant species and their habitats. However, they often may be reluctant to undertake proactive activities that increase the likelihood of use of their properties by endangered and threatened species due to their fear of future additional property-use restrictions. Safe Harbor Agreements are a means of providing incentives to property owners to restore, enhance, or maintain habitats and/or populations of listed species that result in a net conservation benefit to these species. Although such Agreements may not permanently conserve or recover such populations or their habitats, they

nevertheless offer important short-term, mid-term, and, in some cases, long-term net conservation benefits. These net conservation benefits may result from reducing fragmentation of habitats, increasing the connectivity of habitats, maintaining or increasing populations, insuring against catastrophic events, enhancing and restoring habitats, buffering protected areas, and creating areas for testing and implementing new conservation strategies.

The purpose of this policy is to ensure consistency in the development of Safe Harbor Agreements. Safe Harbor Agreements encourage proactive species' conservation efforts by private and other non-Federal property owners while providing certainty relative to future property-use restrictions, even if these efforts attract listed species onto enrolled properties or increase the numbers or distribution of listed species already present on their properties. These voluntary Agreements will be developed between either Service, or the Services jointly, and private and other non-Federal property owners. The Services will closely coordinate development of these Agreements with the appropriate State fish and wildlife or other agencies and any affected Tribal governments. Collaborative stewardship with State fish and wildlife agencies is particularly important given the partnerships that exist between the States and the Services in recovering listed species. Approved Safe Harbor Agreements will be covered under a new category of ''enhancement of survival'' permits issued under section 10(a)(1)(A) of the Act.

Safe Harbor Agreements may be initiated by property owners, or the Services may take the initiative on their own or in concert with other Federal or State agencies to encourage property owners to voluntarily enter into Safe Harbor Agreements for a given area, particularly when many non-Federal parcels of property are involved. The Services will work with the participating landowner to develop an ''enhancement of survival'' permit application and the Safe Harbor Agreement. The Services will assist landowners in identifying actions that the landowners will voluntarily undertake or forego to provide a net conservation benefit to the listed species to be covered by the Agreement.

Development of an ''enhancement of survival'' section 10(a)(1)(A) permit application and an adequate Safe Harbor Agreement are intricately linked. All parties to the Agreement will coordinate the development of the Agreement to ensure that the measures included in the Agreement and permit are consistent.

The Services recognize that Safe Harbor Agreements are not appropriate under all circumstances. In particular, where the land or water is occupied by a listed species and the property owner seeks immediate ''incidental take'' authorization, application for and development of a Habitat Conservation Plan (HCP) and issuance of an incidental take permit under section 10(a)(1)(B) is the appropriate tool. Also, an Agreement is not appropriate in situations that do not meet the net conservation benefit standards of this policy. For example, if the Services can reasonably anticipate that a proposed Agreement would only redistribute the existing population of a listed species or attract a species away from a habitat that has provided long-term protection to a habitat without such protection, the Services would not enter into an Agreement. Also, if a species is so depleted or its habitat so degraded that considerable improvement over baseline conditions is necessary to result in a net conservation benefit, an Agreement may not be appropriate. For certain aquatic, riverine, and/or riparian species it may be too difficult to reach a net conservation benefit since returning to the baseline conditions could have serious negative effects that would negate or outweigh the benefits achieved through the Agreement.

Availability of resources will also be a governing factor for the Services. While the Services expect the interest in Safe Harbor Agreements and the demand for technical assistance to property owners to increase, Safe Harbor Agreements are developed by FWS using limited funds appropriated for recovery activities. Therefore, the Services will focus on potential Agreements that provide the greatest contribution to the recovery of multiple listed species. Another factor will be whether there is sufficient information to develop sound conservation measures. The Services will work with State, Tribal, and other interested parties to develop information on species' conservation requirements that have not been adequately documented in the scientific literature.

Part 2. What Definitions Apply to This Policy?

The following definitions apply for the purposes of this policy.

''Baseline conditions'' means population estimates and distribution and/or habitat characteristics and determined area of the enrolled property that sustain seasonal or permanent use by the covered species at the time the Safe Harbor Agreement is executed between the Services and the property owner.

''Covered species'' means a species of fish or wildlife that is the subject of a Safe Harbor Agreement. Covered species are limited to species that are Federally listed as endangered or threatened and are included in the Safe Harbor Agreement and accompanying enhancement of survival permit.

''Enhancement of survival permit'' means a permit issued under the authority of section 10(a)(1)(A) of the Act.

''Enrolled property'' means all private or non-Federal property, waters, or natural resources to which the assurances in a Safe Harbor Agreement apply and on which incidental taking is authorized under the enhancement of survival permit.

''Management activities'' are voluntary conservation actions to be undertaken by a property owner that the Services believe will benefit the covered species.

''Net conservation benefit'' means the cumulative benefits of the management activities identified in a Safe Harbor Agreement that provide for an increase in a species' population and/or the enhancement, restoration, or maintenance of covered species' suitable habitat within the enrolled property, taking into account the length of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement of survival permit. Net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered species.

''Non-Federal property owner'' includes, but is not limited to, private individuals, organizations, businesses, State, local, and Tribal governments, and other non-Federal entities who own the enrolled property. Federal agencies can be involved in the development of Safe Harbor Agreements, but will not receive the same assurances provided through these Agreements as non-Federal property owners.

''Safe Harbor Agreement'' means an Agreement signed by the Services and a property owner and any other cooperator, such as the holder of a ''programmatic'' permit, if appropriate, that (a) sets forth specific management activities that the private or non-Federal property owner will voluntarily undertake or forgo that will provide a net conservation benefit to covered species and (b) provides the property owner with the Safe Harbor assurances described within the Agreement and

authorized in the enhancement of survival permit.

''Safe Harbor Assurances'' are assurances provided by the Services to a non-Federal property owner in the Agreement and authorized in the enhancement of survival permit for covered species. These assurances allow the property owner to alter or modify enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that it returned the species back to the originally agreed upon baseline conditions. Such assurances may apply to whole parcels or portions of the owner's property as designated in the Agreement. These assurances depend on the property owner complying with obligations in the Agreement and in the enhancement of survival permit.

Part 3. How Is the Cooperation and Coordination With the States and Tribes Described in the Policy?

Coordination with the appropriate State agencies and any affected Tribal governments is important to the success of Safe Harbor Agreements. Coordination allows the special local knowledge of all affected entities to be considered in the development of the Agreements. The Services will work closely with State agencies on matters involving the distribution of materials describing the Safe Harbor Agreement policies and programs, the determination of acceptable baseline conditions, and development of appropriate monitoring efforts. Because of the Services' trust responsibilities, the Services will also closely coordinate and consult with any affected Tribal government that has a treaty right to any fish or wildlife resources covered by a Safe Harbor Agreement.

Part 4. What Is Species Net Conservation Benefit From Safe Harbor Agreements?

Before entering into any Safe Harbor Agreement, the Services must make a written finding that all covered species will receive a net conservation benefit from management actions undertaken pursuant to the Agreement. The finding must clearly describe the expected net conservation benefits and how the Services reached that conclusion. Net conservation benefits must contribute, directly or indirectly, to the recovery of the covered species. This contribution toward recovery will vary and may not be permanent. The Services will not rely solely on these benefits as the basis to delist any species. A Safe Harbor Agreement does not have to provide permanent conservation for enrolled property; however, Agreements must be sufficient to provide a net conservation benefit to all covered listed species, thereby contributing to the recovery of such species over time.

Conservation benefits from Safe Harbor Agreements include, but are not limited to, reduction of habitat fragmentation rates; the maintenance, restoration, or enhancement of habitats; increase in habitat connectivity; maintenance or increase of population numbers or distribution; reduction of the effects of catastrophic events; establishment of buffers for protected areas; and establishment of areas to test and develop new and innovative conservation strategies. The Services believe a ''net conservation benefit'' test is necessary to justify the issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Act. The contribution to the recovery of listed species by Safe Harbor Agreements must be evaluated carefully, since realized benefits from these Agreements will be affected by the duration of the Agreement, among other things.

Part 5. What Are the Standards and Development of a Safe Harbor Agreement and Permit Issuance Under Section 10(a)(1)(A) of the Act?

A non-Federal property owner may obtain an enhancement of survival permit under section 10 (a)(1()A) of the Act to incidentally take a covered species above the agreed upon baseline conditions of the Safe Harbor Agreement, if the Agreement satisfies the following requirements:

The Agreement must—

(1) Specify the species and/or habitats covered, including the habitat conditions, and identify the enrolled property covered by the Agreement;

(2) Include a full description of the agreed upon baseline conditions for each of the covered species within the enrolled property;

(3) Identify management actions that would be undertaken to accomplish the expected net conservation benefits to the species, where and when the benefits would be achieved, and the agreed upon time frames these management actions will remain in effect to achieve the anticipated net conservation benefits;

(4) Describe any incidental take associated with the management actions during the term of the Agreement;

(5) If appropriate, incorporate a notification requirement to provide the Services or appropriate State agencies with a reasonable opportunity to rescue individuals of a covered species before any authorized incidental taking occurs;

(6) Describe what activities would be expected to return the enrolled property to baseline conditions and the extent of incidental take that would likely result from such activities;

(7) Satisfy other requirements of section 10 of the Act; and

(8) Identify a schedule for monitoring and the responsible parties who will monitor maintenance of baseline conditions, implementation of terms and conditions of the Agreement, and any incidental take as authorized in the permit.

The Services will consult under section 7 of the Act on proposed issuance of the enhancement of survival permit.

Part 6. What Are Baseline Conditions?

The Services, the property owner, and any other cooperator(s) must accurately describe the baseline conditions of the property and species covered by the Safe Harbor Agreement. The baseline conditions must reflect the known biological and habitat characteristics that support existing levels of use of the property by species covered in the Agreement. However, for circumstances beyond the control of the property owner (e.g., loss of nest trees due to storm damage), the parties to the Agreement may revise the baseline conditions to reflect the new circumstances and may develop a new baseline upon which all parties agree.

(A) *How do you Determine Baseline Conditions?* This policy requires a full description of baseline conditions for any species covered in an Agreement (see Part 5 above). The Services, or appropriate cooperators, with the concurrence of the participating property owner, will describe the baseline conditions for the enrolled property in terms appropriate for the covered species such as number and location of individual animals, if determinable, existing habitat areas or characteristics that support the species covered at the time of the Agreement, and other appropriate attributes. On-site inspections, maps, aerial photographs, remote sensing, or other similar means can help determine baseline conditions. To the extent determinable, the parties to the Agreement must identify and agree on the degree to which the enrolled property is inhabited, permanently or seasonally, by the covered species. When either Service does not directly determine the baseline conditions, they must review and concur with the determination before entering into an Agreement, and, if necessary, conduct on-site visits. Formulation of baseline conditions can incorporate information provided by the

property owner and any other appropriate agency or species experts, as appropriate. For species that are extremely difficult to survey and quantify, an estimate and an indirect measure (e.g., number of suitable acres of habitat of the species) is acceptable and should be based on the best available techniques and information. The Services will develop the estimate, and hence baseline conditions, following a protocol agreed upon by all parties to the Agreement. The Services will use population estimates, where available, to determine the degree of occupancy of the enrolled lands by covered species. However, in most cases, the baseline conditions will be described as the amount and condition of habitat in the enrolled lands and not the number of individuals of covered species, since the number of individuals could fluctuate over time. For example, if population numbers did vary naturally during the term of an Agreement, and the baseline was described as number of individual animals, the landowner could be found to be in non-compliance with an Agreement when a return to baseline is desired simply because of natural population fluctuations and not as a result of his or her own actions. In cases where no seasonal or permanent occupation by covered listed species is documented, the Services will determine baseline conditions to be zero, unless the participating landowner agrees to a higher baseline.

(B) *Are Plants Covered by the Safe Harbor Policy?* The Act's ''take'' prohibitions generally do not apply to listed plant species on private property. Therefore, the incidental take assurances provided in this policy are legally not necessary for listed plant species. However, the FWS strongly encourages and often enters into Agreements with non-Federal property owners to restore and enhance habitats for listed plants.

In addition, the Services must review the effects of the Safe Harbor permit on listed plants under section 7 of the Act, even when those plants are found on private property. In approving an enhancement of survival permit and entering into a Safe Harbor Agreement, the Services must confirm under section 7 that the Agreement is not likely to ''jeopardize the continued existence'' of any listed plants. In the interest of conserving listed plants and complying with their responsibilities under section 7, the Services will encourage a property owner to voluntarily assist the Services in restoring or enhancing listed plant habitats present within the enrolled property.

(C) *What are the Considerations for Future Section 7 and Assurances?* In reviewing a proposed Safe Harbor Agreement under section 7, the Services must determine whether anticipated future property use changes within the enrolled property and incidental take consistent with the established baseline conditions will jeopardize listed species of fish and wildlife or plants, or destroy or adversely modify designated critical habitat. If a future action on the enrolled property with a Federal nexus prompts the need for additional section 7 review, and take of the listed species that does not move them below baseline conditions is likely, the Services will issue a non-jeopardy biological opinion and incidental take statement that is consistent with the Safe Harbor Agreement as long as the activity was initiated by the participating landowner (e.g., the need for a Clean Water Act section 404 permit). In particular, the Services will provide the Federal agency with reasonable and prudent measures to minimize incidental take that require only implementation of the terms and conditions provided to the participating landowner in the Safe Harbor Agreement and associated 10(a)(1)(A) permit. This approach is warranted because the effects of any incidental take consistent with the established baseline conditions would previously have been considered during the Services' intra-agency section 7 review of the proposed Agreement. However, if the future action was not initiated by the participating landowner's, (e.g., condemnation of lands for a highway project), the action agency may receive a Biological Opinion with reasonable and prudent alternatives or measures that are different from those included in the affected landowner's Safe Harbor Agreement/permit.

Part 7. What Are Assurances to Property Owners?

A property owner who enters into an Agreement and later wishes to return enrolled property to the baseline conditions needs to demonstrate that the agreed upon baseline conditions were maintained and that activities identified in the Agreement as necessary to achieve the net conservation benefit were carried out for the duration of the Agreement. If the property owner carried out the management actions and complied with the permit and the Agreement conditions, the property owner would be authorized to use the property in any manner that does not result in moving the enrolled property to below baseline conditions. These assurances run with the enrolled lands and are valid for as long as the participating landowner is complying with the Safe Harbor Agreement and associated permit. An Agreement may be of a relatively short duration if the management actions and net conservation benefits can be achieved within, for example, 10 years. However, a 10(a)(1)(A) permit may extend beyond the life of an Agreement since the assurances will run with the land, not just the length of the Agreement. Because the assurances run with the enrolled lands for as long as the permit is valid, the participating landowner has the opportunity to sustain covered species within the enrolled lands even after the expiration of the Safe Harbor Agreement and defer take, thus extending the temporal extent of the ''net conservation benefits'' achieved under the Agreement. When land subject to a Safe Harbor Agreement is transferred, the new landowners will, at their option, be able to receive assurances by signing a new Agreement and receiving a new permit.

The Services are prepared as a last resort to revoke a permit implementing a Safe Harbor Agreement where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Services would first have to exercise all possible means to remedy such a situation.

Part 8. How Does the Services Manage Occupation by Non-Covered or Newly Listed Species?

The possibility exists that after an Agreement is signed and an enhancement of survival permit is issued, a listed species not addressed in the Agreement may occupy enrolled property. If the Services conclude that the species is present as a direct result of the property owner's conservation actions taken under the Agreement, the Services will:

(1) At the request of the property owner, amend the Agreement to reflect the changed circumstances and describe the baseline conditions for the added species, as appropriate; and

(2) Review and revise the permit, as applicable, to address the presence of additional listed species on enrolled property.

The Services will not extend assurances in the permit to a non-covered listed species if the species was specifically excluded from the original Agreement at the participating property owner's request, or if its presence is a result of activities not directly attributable to the property owner's management activities. However, if the parties to the Safe Harbor Agreement

agree that a listed species that was not in the original Agreement should be included, then addenda to the Agreement and permit are necessary. If it is appropriate to add species to the Agreement, the Services must determine enhancement or maintenance actions that are specific to the newly covered species, baseline conditions, and a net conservation benefit to that species.

Any change to a Safe Harbor Agreement or amendment to a section 10 (a)(1)(A) permit to include a non-covered species would be subject to the same review process (e.g., section 7 and NEPA review) and issuance criteria (standards) as the original Safe Harbor Agreement and permit.

Part 9. Is Monitoring Required?

The Services will ensure that adequate monitoring is included in each Safe Harbor Agreement/permit. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. In addition, the public will have an opportunity to review the monitoring plan during the public comment period on the issuance of the permit. Monitoring programs must be agreed upon before finalization of the Agreements and issuance of the permits. The monitoring component of these Agreements ensure that the participating landowner is implementing the provisions of these Agreements. Additionally, these monitoring programs will provide valuable program implementation information for the Services to evaluate the overall program and ensure its continued evolution toward a more effective and efficient program. Larger scale or complex Safe Harbor Agreements will require more in depth and thorough monitoring programs.

Part 10. How Does the Services Comply With National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended, and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impact of their actions, to analyze a full range of alternatives, and to use public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements by either a Categorical Exclusion, Environmental Assessment (EA), or Environmental Impact Statement (EIS), depending on the effects of their proposed action.

The Services will review each Safe Harbor Agreement and associated permit action for any significant environmental, economic, social, historical, or cultural impact, or for significant controversy (516 Departmental Manual 2, Appendix 2 for FWS and NOAA's Environmental Review Procedures and NOAA Administrative Order Series 216–6). If the Services conclude that a significant impact could occur, the issuance of a permit would require preparation of an EA or EIS, although the Services believe that the need for an EIS will be rare. General guidance on when the Services exclude an action categorically and when and how to prepare an EA or EIS is found in the FWS's Administrative Manual (30 AM 3) and NOAA Administrative Order Series 216–6. If a Safe Harbor Agreement and associated permit are not expected to individually or cumulatively have a significant impact on the quality of the human environment or other natural resources, the Agreement/permit may be categorically excluded. The Services are committed to develop NEPA documentation for complex or large scale (e.g., statewide) Safe Harbor Agreement/permits to ensure effective environmental review of such significant actions.

Part 11. Can Agreements Be Transferred?

If a property owner who is party to a Safe Harbor Agreement transfers ownership of the enrolled property to a non-Federal entity, the Services will regard the new owner as having the same rights and obligations with respect to the enrolled property as the original property owner, if the new property owner agrees to become a party to the original Agreement and enhancement of survival permit. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized, so long as the new property owner complies with the management actions identified in the Agreement and maintains the baseline conditions. However, the new property owner would not be responsible for any provisions of the Agreement and would not receive any assurances relative to section 9 restrictions, unless the new owner agrees to become party to the Agreement and permit.

All Safe Harbor Agreements will commit the participating property owner to notify the Services before any transfer of ownership of any property subject to the Agreement. This will allow the Services to contact the new property owner to explain the prior Safe Harbor Agreement and to determine whether the new property owner agrees to continue the original Agreement or desires to enter a new Agreement. If the new property owner agrees to continue an existing Safe Harbor Agreement, the Services will honor the original baseline conditions for the enrolled property under consideration.

Part 12. Do Property Owners Retain Their Discretion?

Nothing in this policy prevents a participating property owner from implementing management actions not described in the Agreement as long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in the Agreement. The Services will provide technical advice, to the maximum extent practicable, to the property owner, when requested. Additionally, a participating landowner that, for circumstances out of the landowner's control, needs to terminate the voluntary management actions that he or she agreed upon under the Safe Harbor Agreement, can terminate the Agreement prior to its expiration date and return the land to baseline conditions even if the expected ''net conservation benefits'' have not been realized. For example, if, due to unanticipated circumstances, the participating landowner needs to generate income to deal with a family emergency, the landowner has the option of terminating the Agreement with the Services to use his or her land, water, and/or natural resources to deal with the emergency.

Part 13. What Is the Discretion of All Parties?

Nothing in this policy compels any party to enter into a Safe Harbor Agreement. Entering a Safe Harbor Agreement is purely voluntary for non-Federal entities and the Services, and presumes that the Agreement will serve the interests of all affected parties. An Agreement does not otherwise create or waive any legal rights of any party to the Agreement.

Part 14. How Do the Services Manage Neighboring Landowners?

The potential effects and/or implications of a Safe Harbor Agreement on neighboring properties may be an important consideration in deciding whether to enter into a Safe Harbor Agreement. In some cases, actions carried out voluntarily by a landowner under a Safe Harbor Agreement may

result in listed species occupying adjacent properties.

The Services will use the maximum flexibility allowed under the Act in addressing neighboring properties under Safe Harbor Agreements and associated take authorizations, including, but not limited to, granting of incidental take authority to the owners of neighboring lands, where occupation of neighboring lands is expected as a result of the Agreement. Neighboring landowners would only be required to agree to such conditions as would be necessary to ensure that the Agreement does not circumvent those obligations or requirements, if any, under section 9 of the Act that were applicable at the time the Agreement was signed. Implications to neighboring landowners with non-enrolled lands will be determined on a case-by-case-basis, and the Services will make every effort to include them as a signatory party to the Agreement and enhancement of survival permit when the occupation of their lands by covered species is expected. For neighbors to receive the Safe Harbor Assurances, they would sign an Agreement with the following requirements: (1) Allow an assessment/establishment of the baseline on their properties with concurrence by all parties, (2) notify the Services prior to significantly modifying the habitat, and (3) allow the Services access to capture and translocate individuals of the covered species on their property that would be expected to be adversely affected by those habitat modifications. To facilitate neighboring landowner's participation, the Services will encourage them to become signatory parties to these Agreements, where appropriate.

Part 15. Will There Be Public Review?

The Services will encourage property owners to involve the public in the development of an Agreement. However, public participation must be agreed to by the property owner. The Services will make every Safe Harbor Agreement available for public review and comment as part of the evaluation process for issuance of the associated enhancement of survival permit. This comment period will generally be 30 days; with the comment period for large or programmatic Agreements 60 days.

Part 16. What Is the Scope of the Policy?

This policy applies to all Federally-listed species of fish and wildlife administered by the Services, as provided in the Act and its implementing regulations.

Dated: March 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

Dated June 10, 1999.

Penelope D. Dalton,

Assistant Administrator of Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Announcement of Final Policy for Candidate Conservation Agreements with Assurances

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (jointly the Services) announce a joint final Policy for Candidate Conservation Agreements (Agreements) with Assurances under the Endangered Species Act of 1973, as amended (Act). This policy offers assurances as an incentive for non-Federal property owners to implement conservation measures for species that are proposed for listing under the Act as threatened or endangered, species that are candidates for listing, and species that are likely to become candidates or proposed in the near future. Published concurrently in this **Federal Register** are the FWS's regulations necessary to implement this policy.

DATES: This policy is effective July 19, 1999.

ADDRESSES: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Washington, D.C. 20240 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Richard Hannan, Acting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (Telephone 703/358–2171) or Marta Nammack, Endangered Species Division, National Marine Fisheries Service (Telephone 301/713–1401).

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1997, the Services issued a draft policy (62 FR 32183), and the FWS issued proposed regulations to implement the policy (62 FR 32189). This policy is intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates in the near future by giving citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners incentives to implement conservation measures for declining species by providing certainty with regard to land, water, or resource use restrictions that might be imposed should the species later become listed as threatened or endangered under the Act. Under the policy, non-Federal property owners, who enter into a Candidate Conservation Agreement with assurances that commit them to implement voluntary conservation measures for proposed or candidate species, or species likely to become candidates or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future.

Much of the land containing the nation's existing and potential fish and wildlife habitat is owned by private citizens, States, local governments, Native American Tribal governments, businesses, organizations, and other non-Federal entities. The future of many declining species is dependent, wholly or in part, on conservation efforts on these non-Federal lands. Such conservation efforts are most effective and efficient when initiated early. Early conservation efforts for proposed and candidate species, and species likely to become candidates or proposed in the near future can, in some cases, preclude or remove any need to list these species as threatened or endangered under the Act.

By precluding or removing any need to list a species through early conservation efforts, property owners can maintain land use and development flexibility. In addition, initiating or expanding conservation efforts before a species and its habitat are critically imperiled increases the likelihood that simpler, more cost-effective conservation options will still be available and that conservation will ultimately be successful.

Early conservation efforts for declining species can be greatly expanded through a collaborative stewardship approach. A collaborative approach fosters cooperation and facilitates the exchange of ideas among private citizens, Federal agencies, States, local governments, Tribes, businesses, and organizations by involving all stakeholders in the conservation planning process.

Candidate Conservation Agreements without assurances have been effective mechanisms for conserving declining species, particularly candidate species, and have, in some instances, precluded or removed any need to list some species. Development of Agreements without assurances will continue to be a high priority. However, most of these Agreements have been between the Services and other Federal agencies since non-Federal property owners have had little incentive to enter such Agreements. Many non-Federal property owners are willing to manage their lands to benefit fish, wildlife, and plants, especially those species that are declining. However, some of these property owners are reluctant to implement conservation measures for declining species because of possible future land, water, or resource use restrictions that may result from the Act's section 9 ''take'' prohibitions if their conservation efforts cause a species to colonize their lands or increase in numbers and the species is subsequently listed as threatened or endangered. This policy is designed to provide these property owners with the necessary assurances to remove these concerns and encourage them to implement conservation measures for these species.

Non-Federal property owners, who through a Candidate Conservation Agreement with assurances commit to implement conservation measures for a proposed or candidate species or a species likely to become a candidate or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. These assurances will be provided in the property owner's Agreement and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act.

The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. ''Other necessary properties'' are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species.

The kinds of conservation measures specified in an Agreement with assurances will depend on the types, amounts, and conditions of, and need for, the habitats existing on the property and on other biological factors. Different kinds of conservation measures may benefit different life stages or serve to fulfill different life history requirements of the covered species. The amount of benefit provided by an Agreement with assurances will depend on many factors, particularly the size of the area on which conservation measures are implemented and the degree of conservation benefit possible (e.g., through habitat restoration or reduction of take). For example, an Agreement with assurances for a property with a small area of severely degraded habitat could be designed to achieve greater benefits than one for a property with a large amount of slightly degraded habitat.

Because Candidate Conservation Agreements with assurances will be designed with the goal of precluding or removing any need to list the covered species, these Agreements can have significance in the Services' listing decisions. However, the determination of whether these Agreements do in fact preclude or remove any need to list the covered species will be made on a case-by-case basis in accordance with the listing criteria and procedures under section 4 of the Act.

Collaborative stewardship with State and Tribal fish and wildlife agencies is particularly important in the development of Candidate Conservation Agreements, given the statutory role of these entities under the Act and their traditional conservation responsibilities and authorities for resident species. The Services recognize that, under some circumstances, a State, Tribal, or local agency or other entity may be able to work more promptly, effectively, and efficiently with individual property owners toward conservation of declining species. Under this policy, the Services can enter into an ''umbrella'' or programmatic Agreement with an appropriate State, Tribal, or local agency or other entity. Such an Agreement and its associated enhancement of survival permit would specify the assurances and take allowances that could be distributed by the participating State, Tribal, or local agency or other entity to individual property owners who choose to participate under the umbrella Agreement. Appropriate agencies for such programmatic Agreements include State or Tribal fish and wildlife agencies and State, Tribal, or local land management agencies. The State, Tribal, or local agency or other entity would be the permittee and would issue Certificates of Inclusion (also called Participation Certificates) to private property owners who satisfy the terms and conditions of the State, Tribal, or local agency's or other entity's programmatic Agreement and its associated ''enhancement of survival'' permit.

The Services have a long history of developing Candidate Conservation Agreements with Federal agencies, and these efforts will continue to be a high priority. However, because subsections 7(a)(1) and (a)(2) of the Act obligate Federal agencies to affirmatively conserve listed species, an obligation not imposed upon non-Federal property owners, the Services will not provide assurances to other Federal agencies through these Agreements.

In 1994, the FWS prepared Draft Candidate Species Guidance, which underwent public review and comment (59 FR 65780, December 21, 1994). However, it did not address the development of Candidate Conservation Agreements with assurances for non-Federal property owners. This final policy will be incorporated into the FWS's final guidance on candidate species conservation.

A final rule of the FWS's regulations necessary to implement this policy is published concurrently in this issue of the **Federal Register**. That final rule also includes the FWS's regulations necessary to implement the Safe Harbor policy (also published concurrently in this issue of the **Federal Register**). The NMFS will publish proposed regulations to implement these policies at a later time.

Summary of Comments Received

The Services received more than 280 letters of comment on the draft policy from Federal and State agencies, businesses and corporations, conservation groups, religious organizations, trade associations, private organizations, and individuals. The Services considered all of the information and recommendations received from all interested parties and made changes to the draft policy where appropriate. A few commenters raised issues related to the FWS's draft implementing regulations, and the FWS

has addressed these issues where appropriate in its final implementing regulations also published in today's **Federal Register**. The following is a summary of the comments on the draft policy and the Services' responses.

Issue 1. Many commenters stated that the policy is inconsistent with provisions of section 7(a)(1) of the Act that requires all Federal agencies to use their authorities to conserve endangered and threatened species.

Response 1. The Services believe that the policy is consistent with provisions of section 7(a)(1) of the Act and enables the Services to further satisfy the intent of this section of the Act. Entering into an Agreement with assurances is completely voluntary for the Services, as it is for property owners. The Services will enter into an Agreement with assurances only if we have determined that the conservation needs for covered species on the participating property owner's property are adequately addressed in the Agreement.

By entering into a Candidate Conservation Agreement with assurances, a property owner can obtain certainty that no additional conservation measures will be required and no additional land, water, and resource use restrictions will be imposed if the species is listed in the future. If they cannot obtain such certainty, some property owners might choose to eliminate or reduce the species' habitat before listing occurs. An Agreement with assurances thus can further the conservation of the covered species because it can prevent such losses of existing habitat.

Issue 2. Many commenters believed that the policy is inconsistent with provisions of section 7(a)(2) of the Act because it precludes reinitiation of section 7 consultation on issuance of an enhancement of survival permit. Also, many commenters believed that the Services cannot guarantee that funding will be available to pay for additional conservation measures needed to address unanticipated changes in circumstances.

Response 2. The Services believe that the policy is consistent with section 7(a)(2) of the Act. As applied to implementation of this policy, section 7(a)(2) requires the Services to conduct a formal intra-Service consultation on the issuance of an enhancement of survival permit. The purpose of any consultation is to ensure that any action authorized, funded, or carried out by a Federal agency, including the issuance of an enhancement of survival permit by the Services, is not likely to jeopardize the continued existence of any listed or proposed species or result in the destruction or adverse modification of designated or proposed critical habitat of such species. Since the standard for Candidate Conservation Agreements with assurances is the preclusion or removal of the need to list, the Services believe that it is highly unlikely that the conservation measures prescribed in an Agreement or any incidental take authorized by the associated enhancement of survival permit would later be discovered to adversely affect the covered species or any listed species causing a need to reinitiate intra-Service consultation.

If unanticipated changes in circumstances occur that might warrant modifications to the agreed upon conservation measures, the Services would work with the property owner to seek mutually agreed upon adjustments to those conservation measures that enhance their effectiveness for the covered species. Thus, the Services and property owners could agree to substitute the original agreed upon conservation measures for new ones that would be no more costly but more effective in addressing the changed circumstances. In this fashion, the conservation goal for that property owner's property could still be maintained.

The Services will not enter into an Agreement unless (1) the threats to and the requirements of the covered species are adequately understood so that the Services can determine that the agreed upon conservation measures will be beneficial to the covered species; and the effects of the agreed upon conservation measures are adequately understood so that the Services can determine that they will not adversely affect listed species or adversely modify critical habitat or (2) any information gaps relating to the requirements of the covered species or the effects of the conservation measures on the covered species or listed species can be adequately addressed by incorporating adaptive management principles into the Agreement. The Services believe that, in many Agreements, the conservation measures prescribed for the covered species will also benefit other species, including listed ones.

Moreover, the Services have significant resources and conservation authorities that can be used to address the needs of species covered by Agreements with assurances when unanticipated changes in circumstances cause a need for additional conservation measures. Some funding for additional conservation measures may come from existing appropriations for either candidate conservation or recovery, depending on whether the species is listed. When necessary, the Services will work with other Federal, State, and local agencies, Tribal governments, conservation groups, and private entities to implement additional conservation measures for the species.

Finally, the Services are prepared as a last resort to revoke a permit implementing a Candidate Conservation Agreement with assurances where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Services would first have to exercise all possible means to remedy such a situation.

Issue 3. Many commenters believed that the policy precludes adaptive management.

Response 3. The Services encourage the inclusion of the principles of adaptive management into Candidate Conservation Agreements with assurances and associated enhancement of survival permits when necessary, especially when new management techniques are being tested. Adaptive management is a process of monitoring the implementation of conservation measures, then adjusting future conservation measures according to what was learned. Adaptive management can also include testing of alternative conservation measures, monitoring the results, and then choosing the most effective and efficient measures for long-term implementation. Inclusion of adaptive management in Agreements allows for up-front, mutually agreed upon changes to conservation measures in response to changing conditions or new information.

By incorporating adaptive management into Agreements with assurances and associated enhancement of survival permits, the Services believe that these Agreements will have sufficient flexibility to enable the Services and property owners to address reasonably foreseeable changes in circumstances or new information.

Issue 4. Many commenters stated that Candidate Conservation Agreements with assurances will undermine recovery of the covered species once it is listed.

Response 4. The Services believe that this comment reflects confusion regarding the standard required by the policy in all Agreements with assurances. The policy requires the Services to determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if

it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Since this is essentially a recovery standard, each property owner with an Agreement with assurances would contribute to precluding or removing any need to list the covered species. Therefore, if the covered species became listed, these property owners would already be implementing conservation measures that address the covered species' conservation needs on their properties.

Issue 5. Many commenters believed that the draft policy limited public participation. Some stated that the draft policy was unclear as to when the Services will solicit comments on Candidate Conservation Agreements with assurances, and some commenters felt that the public should be allowed to participate in the development of all Agreements. In addition, many commenters said that Agreements should be subject to citizen enforcement.

Response 5. The Services have changed the policy to clarify when the public will have the opportunity to review and comment on Agreements with assurances. The Services will make every Agreement with assurances available for public review and comment as part of the evaluation process for issuance of the enhancement of survival permit associated with these Agreements. This comment period will generally be 30 days; the comment period for large-scale or programmatic Agreements that may affect other natural resources will be at least 60 days.

The development of an Agreement with assurances consists primarily of the preparation of a proposal by a non-Federal property owner to modify voluntarily their current land management practices so as to restore, enhance, or preserve habitat or to implement voluntarily other conservation measures for declining species. Because development of such a proposal is purely voluntary and involves private land use decisions, public participation in the development of an Agreement with assurances will only be provided when agreed to by the property owner.

However, the Services will encourage property owners to allow for public participation during the development of an Agreement with assurances, particularly if non-Federal public agencies (e.g., State fish and wildlife agencies) are involved. The Services also will encourage State or local agencies or other entities developing ''umbrella'' or programmatic Agreements, which would specify the assurances and take allowances that could be further delegated by the State or local agency or other entity to individual participating non-Federal property owners, to provide extensive opportunities for public involvement during the development process.

The public will also be given other opportunities to comment on Agreements in cases that are related to a listing determination. When one or more additional Agreements are completed after the covered species is proposed for listing, and the Services determine, based upon a preliminary evaluation, that all completed Agreements could potentially justify withdrawal of the proposed listing, the comment period for the proposed listing will be extended or reopened to allow for public comments on the Agreements' adequacy in removing threats to the species. The Services believe a preliminary evaluation of the likelihood that the completed Agreements remove the need to list is necessary in order to justify constricting the available time to reach a final determination by extending or reopening the comment period on a proposed rule.

The provisions of the Act providing for citizen suits will be neither enhanced nor diminished in any way by the issuance of this policy because it will be implemented through the enhancement of survival permitting process recognized under the Act. To the extent that the current Act allows for citizen lawsuits to challenge the issuance of a given section 10(a) permit, nothing in this policy would modify or alter that opportunity for possible judicial review.

Issue 6. Many commenters stated that all Candidate Conservation Agreements with assurances should undergo independent scientific review.

Response 6. In determining the need for independent scientific review, the Services will consider the complexity of the Agreement, the size of the geographic area covered, the number of species covered, the presence of data gaps or scientific uncertainties, and other factors. Scientific experts will often be asked to assist with development of conservation measures and/or to review a draft Agreement. When scientific experts are not specifically solicited to provide comments, such individuals can submit comments during the general public review and comment periods (see Response 5 above). In developing Agreements with assurances, the Services may use existing State conservation plans or strategies that have undergone scientific review, or the Services may use other scientific information published in peer reviewed journals.

Issue 7. Many commenters questioned the authority for and the availability of adequate funding for the implementation of this policy.

Response 7. The Services believe that sections 2, 7, and 10 of the Act allow the implementation of this policy. For example, section 2 states that ''encouraging the States and other interested parties through Federal financial assistance and a system of incentives, to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.'' The Services believe that establishing a program for the development of Candidate Conservation Agreements with assurances provides an excellent incentive to encourage conservation of the Nation's fish and wildlife. Section 7 requires the Services to review programs they administer and to ''utilize such programs in furtherance of the purposes of this Act.'' The Services believe that, in establishing this policy, they are utilizing their Candidate Conservation Programs to further the conservation of the Nation's fish and wildlife. Of particular relevance is section 10(a)(1) which authorizes the issuance of permits to ''enhance the survival'' of a listed species. From the perspective of the Services, a well designed voluntary Candidate Conservation Agreement is the epitome of conservation efforts designed to ''enhance the survival'' of the covered species.

Funding is available to implement this policy through annual appropriations. The Services are currently working on Candidate Conservation Agreements without assurances, and with finalization of this policy the Services will use available resources to develop Agreements with assurances as well. The FWS is currently implementing over 40 conservation agreements (without assurances) and actions benefitting over 200 species. Several of these conservation agreements and actions have successfully precluded or removed threats so that listing by the Services was avoided.

The Services will prioritize the development of Agreements with assurances because resources to develop Agreements are limited. Prioritization will help the Services focus on those Agreements that are expected to provide the greatest conservation benefits.

Issue 8. Many commenters stated that the policy should require that all

Candidate Conservation Agreements with assurances include monitoring provisions.

Response 8. The Services agree that monitoring is necessary to ensure that the conservation measures specified in an Agreement with assurances are being implemented and to learn about the effectiveness of the agreed upon conservation measures. In particular, when adaptive management principles are included in an Agreement, monitoring is especially helpful for obtaining the information needed to measure the effectiveness of the conservation program and detect changes in conditions. For these reasons, monitoring will be a component of most Agreements with assurances. For many of these Agreements, monitoring can be conducted by the Services or the State and, in many cases, may involve only a brief site inspection and appropriate documentation.

Issue 9. Many commenters believed that Candidate Conservation Agreements with assurances will wrongly be used to replace recovery plans or warranted listing determinations or to delay the listing process.

Response 9. The Services do not intend for Agreements with assurances to replace recovery plans. In fact, in order to facilitate the development of Agreements with individual property owners, the Services may develop a conservation outline, strategy, or plan to determine the measures needed to address the conservation needs of the covered species. If the covered species is later listed, the conservation strategy or plan may form the basis for part or all of a recovery plan.

The Services also do not intend to use Agreements with assurances to justify a determination not to list the covered species when listing is in fact warranted. As described in Response 5, when an Agreement with assurances is completed after the covered species is proposed for listing, and when the Services determine, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule, the comment period for the proposed rule will be extended or reopened to allow for public comments on the Agreement's adequacy in removing threats to the species.

However, the Act requires the Services to issue a final determination within 1 year of issuing a proposed rule to list. The FWS is working diligently to remove the backlog of listing actions that accrued following the listing moratorium in 1995 and 1996, and the FWS expects to soon be able to again make final listing determinations within the 1-year time frame. The Services will not extend this time frame in order to allow for the completion and/or consideration of an Agreement with assurances. The Services believe a preliminary evaluation of an Agreement is necessary in order to justify constricting the available time to reach a final determination by extending or reopening the comment period on a proposed rule.

Issue 10. Several commenters stated that the policy should require incorporation of avoidance and minimization of take in all Candidate Conservation Agreements with assurances.

Response 10. The Services believe that avoidance and minimization of take is an inherent consideration in the development of any Agreement with assurances. Property owners whose current land, water, or resource use results in take of proposed or candidate species, or species likely to become candidates or proposed in the near future, are a primary focus of this policy. For some Agreements, avoidance and/or minimization of take may be the primary objective. A property owner entering into an Agreement with assurances can be assured that, if the covered species is listed in the future, no additional land, water, or resource use restrictions will be imposed above and beyond the conservation measures set forth in the Agreement. After take is eliminated or reduced, land, water, or resource uses can often provide significant benefits to the covered species. For example, a property owner could eliminate or reduce take of a declining grassland bird species that nests on his property by agreeing to delay mowing until after the nesting season. The species would benefit from successful reproduction, and the property owner would benefit from being able to maintain his current land use even if the species is later listed.

If a property owner exceeds the conservation goal established for his property as specified in an Agreement with assurances, the property owner may choose to reduce the level of conservation benefits he/she has provided to the covered species to a lower level, but one that is still at or above the conservation goal specified in the Agreement. The property owner's enhancement of survival permit would authorize incidental take associated with this reduction of conservation benefits back to the agreed upon level. Prior to issuing the enhancement of survival permit, the Services must determine that the conservation goal for the property can be maintained with the level of take authorized by the permit. The policy also requires that the Agreement include a notification requirement, if appropriate, to provide the Services or State agencies with a reasonable opportunity to rescue and translocate individuals of a covered species before any authorized take occurs. The Services believe that these provisions will ensure that any authorized take will not prevent a property owner from achieving the conservation goal established for his property and will minimize the amount of authorized take that occurs.

Issue 11. Several commenters believed that the policy should list the minimum conditions that must be satisfied before any Candidate Conservation Agreements with assurances are pursued.

Response 11. The Services agree with this comment, and the final policy lists the general requirements that all Agreements with assurances and associated enhancement of survival permits should satisfy. In addition, FWS's implementing regulations, which are published in today's **Federal Register**, also list the requirements that must be met before the Services will issue an enhancement of survival permit.

In addition, the FWS's draft Candidate Conservation Handbook includes a list of conditions under which Candidate Conservation Agreements would most likely be successful in eliminating threats and precluding or removing any need to list the covered species. This list would also apply to Agreements with assurances. The Services believe that such a list is more appropriately included in implementation guidance such as the FWS's Candidate Conservation Handbook.

Issue 12. Several commenters stated that the policy should not apply to candidate and proposed species because determinations have already been made that these species should be listed, and efforts to develop Candidate Conservation Agreements with assurances would only delay or forego the necessary protection that could be afforded by listing.

Response 12. The Services do not believe that Agreements with assurances will delay or forego any actions necessary to achieve conservation of the covered species. In fact, these Agreements will help to garner the necessary support from non-Federal property owners in achieving conservation through voluntary implementation of conservation measures. Additionally, the Services

believe that, for some candidate and proposed species, it is possible to complete the Agreements with assurances necessary to remove the need to list before a final listing determination could be made. These candidate and proposed species may include (1) species for which relatively few, non-complex Agreements are necessary, (2) species for which development of Agreements begins prior to the species becoming a candidate or proposed species, and (3) candidate species that have a low listing priority. Therefore, the Services believe that including candidate and proposed species in this policy is appropriate. However, for the Services to justify withdrawal of a proposed rule to list, the parties to all Agreements with assurances for the covered species must have the authority, funding, and commitment to implement the Agreements.

As of April 30, 1999, there were 154 FWS candidate species awaiting preparation of proposed rules and 69 FWS proposed species awaiting preparation of final rules. Final listing of many of these species, as well as many of the species that will be added as candidates or proposed species in the future, will require considerable time. The FWS believes that initiating early conservation efforts, including the development of Agreements with assurances, for some of these species will significantly increase the likelihood that conservation will be successful.

Issue 13. Several commenters asked how the conservation goal for each property owner's property can be determined without preparing a recovery plan.

Response 13. The Services believe it may be appropriate in some cases to prepare a conservation outline, strategy, or plan for a species before an Agreement with assurances is developed. In some cases, a conservation strategy or plan may already have been developed by the Services, another Federal agency, and/or a State agency. These strategies or plans may already have identified measures that should be implemented to conserve the covered species. In these cases, development of Agreements with assurances can be initiated right away.

Issue 14. Some commenters argued that a property owner could destroy habitat for candidate or proposed species, and then request a Candidate Conservation Agreement with assurances based on a lower starting baseline. Also, some commenters suggested that property owners may threaten to destroy habitat unless Agreements are written their way.

Response 14. The Services will not enter into any Agreement with assurances that does not meet the minimum standards established by this policy and its implementing regulations. Entering into an Agreement with assurances is voluntary for the Services and property owners; the Services will refuse to enter into an Agreement that does not meet the minimum established standards. Also, because the conservation goal for a property owner's property is not based solely on the amount of currently suitable habitat present, destroying habitat will likely only make it more difficult for the property owner to achieve the conservation goal for his property. Removing threats and taking actions consistent with the goal of precluding or removing any need to list would only be made more arduous by an initial destruction of habitat. Finally, the Services do not believe that it is credible to suggest that a property owner who is otherwise interested enough in declining species conservation to consider entering into an Agreement is likely to go in and first destroy portions of the species' habitat before entering into an Agreement.

Issue 15. Some commenters stated that the standard for Candidate Conservation Agreements with assurances should be to increase the likelihood that the species will survive rather than to preclude or remove any need to list.

Response 15. The Services believe that the overall goal for Agreements with assurances developed under this policy should be to remove threats to the covered species so as to preclude or remove any need to list the species. The Services believe that the policy must incorporate this standard in order to justify the expenditure of resources to develop and evaluate Agreements with assurances, process associated enhancement of survival permits, and allow the Services to provide assurances to the property owner.

Issue 16. Some commenters stated that the Services must conduct National Environmental Policy Act (NEPA) analyses for all Candidate Conservation Agreements with assurances and enhancement of survival permits.

Response 16. The Services believe that implementation of this policy must comply with NEPA. The Services have determined that most of these Agreements will be categorically excluded under the Department of Interior Departmental Manual (DM) NEPA procedures in 516 DM 2, Appendix 1.10 and under NOAA Administrative Series 216–6, Sections 602b.3 and 602c.3. The Services expect that most Agreements with assurances and associated enhancement of survival permits will result in minor or negligible effects on the environment including federally listed species and their habitats. Complex, large-scale, or programmatic Agreements and their associated permits will require individual NEPA analysis.

Issue 17. Many commenters were confused by the term ''umbrella agreements'' in the draft policy.

Response 17. The Services may enter into an ''umbrella'' or programmatic Agreement with an appropriate State or local agency or other entity, and through such an Agreement and associated enhancement of survival permit, specify the assurances and take allowances that could be further delegated by the State or local agency or other entity to individual participating non-Federal property owners. In such a case, the State or local agency or other entity would be the permittee and would issue Certificates of Inclusion (also sometimes called Participation Certificates) to non-Federal property owners who satisfy the terms and conditions of the State or local agency's or other entity's ''umbrella'' or programmatic Agreement and associated permit. To avoid confusion in this final policy, the term ''Agreements with non-Federal property owners'' is used to refer to Agreements between the Services and individual property owners as well as ''umbrella'' or programmatic Agreements with State or local agencies or other entities through which assurances are further delegated to individual participating non-Federal property owners.

Issue 18. The statement ''These assurances will only be provided to the participating property owners or State or local land management agencies but not to State regulatory agencies'' confused many commenters who recognized that many State or local land management agencies also have regulatory responsibilities.

Response 18. The Services agree that this statement was confusing and have clarified it in the final policy. In making the statement, the Services overlooked the dual role of many State and local land management agencies. The Services intended to emphasize that only non-Federal property owners, whether they are State or local agencies, private individuals, Tribes, or other non-Federal entities, can receive assurances. However, as discussed previously, the Services can enter into an ''umbrella'' or programmatic Agreement with a State or local agency, including a State or local regulatory agency if appropriate, or other entity, and through such an Agreement and its

associated enhancement of survival permit, specify the assurances and take allowances that can be delegated by the State or local agency or other entity to individual participating non-Federal property owners through Certificates of Inclusion, Participation Certificates, or other similar vehicles.

Issue 19. Many commenters questioned the meaning of, or were confused by, the phrase ''similarly situated property owners,'' which was used in describing the standard to which every Candidate Conservation Agreement with assurances will be held. Some commenters asked what the standard would be if there are no other similarly situated property owners within the range of the species. Some commenters asked what non-similarly situated property owners would be required to do. In addition, some commenters asked what property owners outside the current range of the species would be required to do if expansion of the current range of the species is necessary to preclude or remove any need to list.

Response 19. The Services agree that the draft policy did not clearly explain the standard that all Agreements with assurances must meet and have revised the description of the standard in the final policy as follows:

''The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Other necessary properties are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species. The kinds of conservation measures specified in an Agreement with assurances will depend on the types, amounts, and conditions of, and need for, the habitats existing on the property and on other biological factors. Different kinds of conservation measures may benefit different life stages or serve to fulfill different life history requirements of the covered species. The amount of benefit provided by an Agreement with assurances will depend on many factors, particularly the size of the area on which conservation measures are implemented and the degree of conservation benefit possible (e.g., through habitat restoration or reduction of take). For example, an Agreement with assurances for a property with a small area of severely degraded habitat could be designed to achieve greater benefits than one for a property with a large amount of slightly degraded habitat.''

The Services believe this description of the standard more clearly explains the contribution an individual property owner entering into an Agreement with assurances would need to make toward precluding or removing any need to list the covered species. This description addresses the fact that properties differ and that, consequently, different conservation measures could be specified for different properties. In addition, this description takes into account the fact that the Services may need to expand the species' current range in order to preclude or remove any need to list.

Issue 20. Several commenters asked for clarification of the phrase ''species which will likely become candidates in the near future.''

Response 20. The objective of this policy is to provide incentives to encourage non-Federal property owners to implement early conservation for declining species with the goal of precluding or removing any need to list. The Services did not want to exclude those species that are declining and/or are becoming subject to increasing threats and may soon be considered for candidate status. Including these species is particularly important considering that the rates of decline can sometimes increase abruptly, that the development of a Candidate Conservation Agreement with assurances might take longer than expected, and that conservation options may be more numerous the earlier a species is addressed. Because the circumstances surrounding each species are unique, the Services have chosen not to adopt a strict regulatory definition of the term ''species that will likely become candidates in the near future.'' Instead, the Services will review species that are not candidates or proposed species on a case-by-case basis when determining whether they may be covered by an Agreement with assurances.

Issue 21. Several commenters were confused by the phrase ''above those levels agreed upon and specified in the Agreement,'' which was used in describing the assurances provided through Candidate Conservation Agreements with assurances and associated enhancement of survival permits.

Response 21. The Services agree that this phrase is confusing and have clarified the meaning in the final policy. The draft policy stated that ''* * * take authorization would be provided to allow the property owner or State or local land management agency to implement management activities that may result in take of individuals or modification of habitat above those levels agreed upon and described in the Agreement.'' The Services did not intend this statement to mean that the amount of take authorized by an enhancement of survival permit could exceed the amount specified in the associated Agreement or could allow for more habitat modification than specified in the Agreement. Rather, the statement was an attempt to explain that the enhancement of survival permit accompanying an Agreement with assurances would authorize a property owner who exceeds the conservation goal specified in the Agreement (e.g., through additional habitat improvement or the implementation of conservation measures that are more effective or beneficial than anticipated and described in the Agreement) to take the additional or enhanced number of individuals of the species that is consistent with the conservation goal specified in the Agreement. That is, a property owner can still avoid the imposition of additional restrictions above those agreed to in the Agreement where the property owner surpassed the conservation goals established under the Agreement.

Issue 22. Some commenters were confused by Part 3A of the draft policy that stated that a Candidate Conservation Agreement with assurances will identify habitat characteristics that support use by the covered species on lands or waters under the property owner's control or that support populations of the covered species in waters that may not be under the property owner's control. These commenters questioned the meaning of the phrase ''waters that may not be under the property owner's control.''

Response 22. In using this phrase, the Services intended to address the fact that, in some cases, characteristics of a particular property owner's property may sustain (or land, water, or resource uses on that property may affect) individuals of a species located on other lands or waters adjacent to or some distance away from the property owner's property. For example, riparian habitat enhancement measures upstream may benefit candidate species that are downstream from the participating property owner's property. An Agreement with assurances can describe this relationship and can include conservation measures to improve the characteristics of the property that help sustain (or to reduce

the impacts of the land, water, or resource uses that may affect) the individuals of the species found off the property owner's property.

Issue 23. Several commenters asked if there was any difference between the meanings of the terms ''conservation actions,'' ''management actions,'' ''conservation activities,'' ''management activities,'' and ''conservation management activities.''

Response 23. The Services did not intend for these terms to have different meanings and, in the final policy, have used a single term, ''conservation measures,'' in place of the terms listed above. The term ''conservation measures'' clearly describes the range of practices which could be included in a Candidate Conservation Agreement with assurances. Not all conservation measures involve ''management'' that is continued into the future; conservation measures may include removal of a hazard to the species, construction of a habitat feature (such as placement of boulders in a stream to create fish resting habitat), or other practices.

Issue 24. Several commenters were confused by the sentence in the ''Definitions'' section of the draft policy under ''Covered species'' that read ''Those species covered in the Agreement must be treated as if they were listed.''

Response 24. The Services agree that this sentence may have caused some confusion and the sentence has been deleted from the final policy. The Services have also clarified the definition in the final policy.

Issue 25. Some commenters questioned why the Services used the term ''incidental take'' to describe take authorized by an enhancement of survival permit under section 10(a)(1)(A) of the Act when ''incidental take'' normally applies to take authorized by an Incidental Take permit under section 10(a)(1)(B).

Response 25. The Services have decided to use the term ''incidental take'' to refer to the take authorized by an enhancement of survival permit associated with a Candidate Conservation Agreement with assurances because this ''take'' is incidental to enhancing the survival of the species through compliance with the Agreement. Similarly, take resulting from research authorized by an enhancement of survival permit under section 10(a)(1)(A) is ''incidental take'' in that it is typically a consequence of and not the purpose of the research. The Services believe using the term ''incidental take'' in this policy will be less confusing than coining a new term to differentiate take authorized under section 10(a)(1)(A) from that authorized under section 10(a)(1)(B).

Issue 26. Some commenters questioned the use of the term ''net benefit'' in the draft policy.

Response 26. The term ''net benefit'' was erroneously included in the draft policy and has been eliminated in the final policy. ''Net benefit'' is a concept more appropriately used in ''Safe Harbor'' Agreements for listed species conservation.

Revisions to the Proposed Policy

The following represents a summary of the revisions made to the proposed Candidate Conservation Agreements with Assurances policy following consideration of public comments.

(1) The final policy describes the mechanism for property owners to terminate their voluntary Candidate Conservation Agreements with assurances before the expiration date.

(2) Specific public review periods for proposed Candidate Conservation Agreements with assurances and their associated proposed enhancement of survival permits have been established in the final policy and implementing regulations.

(3) The final policy includes general guidelines for the development of monitoring provisions of Candidate Conservation Agreements with assurances.

(4) Several definitions and terms have been clarified in the final policy.

Final Candidate Conservation Agreements With Assurances Policy

Part 1. What Is the Purpose of the Policy?

This policy, is intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates or proposed in the near future, by giving non-Federal citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners incentives to implement conservation measures for declining species by providing regulatory certainty with regard to land, water, or resource use restrictions that might otherwise apply should the species later become listed as threatened or endangered under the Act. Under the policy, non-Federal property owners who commit in a Candidate Conservation Agreement with assurances to implement mutually agreed upon conservation measures for a proposed or candidate species, or a species likely to become a candidate or proposed in the near future, will receive assurances from the Services that additional conservation measures above and beyond those contained in the Agreement will not be required, and that additional land, water, or resource use restrictions will not be imposed upon them should the species become listed in the future.

In determining whether to enter into a Candidate Conservation Agreement with assurances, the Services will consider the extent to which the Agreement reduces threats to proposed and candidate species and species likely to become candidates or proposed in the near future so as to preclude or remove any need to list these species as threatened or endangered under the Act. While the Services realize that the actions of a single property owner usually will not preclude or remove any need to list a species, they also realize the collective effect of the actions of many property owners may be to preclude or remove any need to list. Accordingly, the Services will enter into an Agreement with assurances when they determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.

While some property owners are willing to manage their lands to benefit proposed and candidate species, or species likely to become candidates or proposed in the near future, most desire some degree of regulatory certainty and assurances with regard to possible future land, water, or resource use restrictions that may be imposed if the species is listed in the future. The Services will provide regulatory certainty to a non-Federal property owner who enters into a Candidate Conservation Agreement with assurances by authorizing, through issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Act, a specified level of incidental take of the species covered in the Agreement. Incidental take authorization benefits non-Federal property owners in two ways. First, incidental take authorization provides assurances to property owners that any extra, either intentional or unintentional, benefits they achieve for the species beyond those agreed upon will not result in additional land, water, or resource use restrictions that would otherwise be imposed should the species become listed in the future. Second, in the event the species is listed in the future, incidental take authorization enables

property owners to continue current land uses that have traditionally caused take, provided take is at or reduced to a level consistent with the overall goal of precluding or removing any need to list the species.

Candidate Conservation Agreements with assurances will be developed in close coordination and cooperation with the appropriate State fish and wildlife agencies and other affected State agencies and Tribes, as appropriate. Close coordination with State fish and wildlife agencies is particularly important given their primary responsibilities and authorities for the management of unlisted resident species. Agreements with assurances are to be consistent with applicable State laws and regulations governing the management of these species.

The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Pursuant to section 7 of the Act, the Services must also ensure that the conservation measures included in any Agreement with assurances do not jeopardize any listed or proposed species and do not destroy or adversely modify any proposed or designated critical habitats that may occur in the area.

Some non-Federal property owners may not have the necessary resources or expertise to develop Candidate Conservation Agreements with assurances. Therefore, the Services are committed to providing, to the maximum extent practicable given available resources, the necessary technical assistance to develop Agreements with assurances and prepare enhancement of survival permit applications. Furthermore, the Services may assist or train property owners to implement conservation measures.

Development of a biologically sound Agreement and enhancement of survival permit application are intricately linked. The Services will process the participating non-Federal property owner's enhancement of survival permit application following the procedures described in 50 CFR Parts 17.22(d)(1) and 17.32(d)(1) or 50 CFR Part 222. All terms and conditions of the enhancement of survival permit must be consistent with the conservation measures included in the associated Agreement with assurances.

Part 2. What Definitions Apply to this Policy?

The following definitions apply for the purposes of this policy.

''Candidate Conservation Agreement'' means an Agreement signed by either Service, or both Services jointly, and other Federal or State agencies, local governments, Tribes, businesses, organizations, or non-Federal citizens, that identifies specific conservation measures that the participants will voluntarily undertake to conserve the covered species.

''Candidate Conservation Agreements with assurances'' means a Candidate Conservation Agreement with a non-Federal property owner that meets the standards described in this policy and provides the non-Federal property owner with the assurances described in this policy.

''Candidate Conservation Assurances'' are assurances provided to a non-Federal property owner in a Candidate Conservation Agreement with assurances that conservation measures and land, water, or resource use restrictions in addition to the measures and restrictions described in the Agreement will not be imposed should the covered species become listed in the future. Candidate Conservation Assurances will be authorized by an enhancement of survival permit. Such assurances may apply to a whole parcel of land, or a portion, as identified in the Agreement.

''Candidate species'' are defined differently by the Services. FWS defines candidate species as species for which FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. NMFS defines candidate species as species for which NMFS has information indicating that listing may be warranted but for which sufficient information to support actual proposed listing rules may be lacking. The term ''candidate species'' used in this policy refers to those species designated as candidates by either of the Services.

''Conservation measures'' are actions that a non-Federal property owner voluntarily agrees to undertake when entering into a Candidate Conservation Agreement with assurances.

''Covered species'' means those species that are the subject of a Candidate Conservation Agreement with assurances and associated enhancement of survival permit. Covered species are limited to species that are candidates or proposed for listing and species that are likely to become candidates or proposed in the near future.

''Enhancement of survival permit'' means a permit issued under section 10(a)(1)(A) of the Act that, as related to this policy, authorizes the permittee to incidentally take species covered in a Candidate Conservation Agreement with assurances.

''Non-Federal property owner'' includes, but is not limited to, States, local governments, Tribes, businesses, organizations, and private individuals, and includes owners of land as well as owners of water or other natural resources.

''Other necessary properties'' are properties in addition to the property that is the subject of a Candidate Conservation Agreement with assurances on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species.

''Proposed species'' is a species for which the Services have published a proposed rule to list as threatened or endangered under section 4 of the Act.

Part 3. What Are Candidate Conservation Agreements With Assurances?

Candidate Conservation Agreements with assurances will identify or include:

A. The population levels (if available or determinable) of the covered species existing at the time the parties negotiate the Agreement; the existing habitat characteristics that sustain any current, permanent, or seasonal use by the covered species on lands or waters owned by the participating non-Federal property owner; and/or the existing characteristics of the property owner's lands or waters included in the Agreement that support populations of covered species on lands or waters not on the participating property owner's property;

B. The conservation measures the participating non-Federal property owner is willing to undertake to conserve the species included in the Agreement;

C. The benefits expected to result from the conservation measures described in B above (e.g., increase in population numbers; enhancement, restoration, or preservation of habitat; removal of threat) and the conditions that the participating non-Federal property owner agrees to maintain. The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would

preclude or remove any need to list the covered species;

D. Assurances provided by the Services that no additional conservation measures will be required and no additional land, water, or resource use restrictions will be imposed beyond those described in B above should the covered species be listed in the future. Assurances related to take of the covered species will be authorized by the Services through a section 10(a)(1)(A) enhancement of survival permit (see Part 5);

E. A monitoring provision that may include measuring and reporting progress in implementation of the conservation measures described in B above and changes in habitat conditions and the species' status resulting from these measures; and,

F. A notification requirement to provide the Services or appropriate State agencies with a reasonable opportunity to rescue individuals of the covered species before any authorized incidental take occurs.

Part 4. What Are the Benefits to the Species?

Before entering into a Candidate Conservation Agreement with assurances, the Services must make a written finding that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. If the Services and the participating property owner cannot agree to an adequate set of conservation measures that satisfy this requirement, the Services will not enter into the Agreement. Expected benefits of the conservation measures could include, but are not limited to: restoration, enhancement, or preservation of habitat; maintenance or increase of population numbers; and reduction or elimination of incidental take.

Part 5. What Are Assurances to Property Owners?

In a Candidate Conservation Agreement with assurances, the Services will provide that if any species covered by the Agreement is listed, and the Agreement has been implemented in good faith by the participating non-Federal property owner, the Services will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the original Agreement. Assurances involving incidental take will be authorized through issuance of a section 10(a)(1)(A) enhancement of survival permit, which will allow the property owner to take individuals of the covered species so long as the level of take is consistent with those levels agreed upon and identified in the Agreement.

The Services will issue an enhancement of survival permit at the time of entering into the Agreement with assurances. This permit will have a delayed effective date tied to the date of any future listing of the covered species. The Services believe that an enhancement of survival permit is particularly well suited for Candidate Conservation Agreements with assurances because the main purpose of such Agreements is to enhance the survival of declining species.

The Services are prepared as a last resort to revoke a permit implementing a Candidate Conservation Agreement with assurances where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Services would first have to exercise all possible means to remedy such a situation.

Part 6. How Do the Services Comply With National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended, and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impact of their actions, to analyze a full range of alternatives, and to use public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements either by preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or by showing that the proposed action is categorically excluded from individual NEPA analysis.

The Services will review each Candidate Conservation Agreement with assurances and associated enhancement of survival permit application for other significant environmental, economic, social, historical or cultural impact, or for significant controversy (516 DM 2, Appendix 2 for FWS and NOAA's Environmental Review Procedures and NOAA Administrative Order Series 216–6). If the Services determine that the Agreement and permit will likely result in any of the above effects, preparation of an EA or EIS will be required. General guidance on when the Services exclude an action categorically and when and how to prepare an EA or EIS is found in the FWS's Administrative Manual (30 AM 3) and NOAA Administrative Order Series 216–6.

The Services expect that most Candidate Conservation Agreements with assurances and associated enhancement of survival permits will result in minor or negligible effects on the environment and will be categorically excluded from individual NEPA analysis. When the impacts to the environment are expected to be more than minor, individual NEPA analysis will be required. Complex, large-scale, or programmatic Agreements and their associated permits will typically be subject to individual NEPA analysis.

Part 7. Will There Be Public Review?

Public participation in the development of a proposed Candidate Conservation Agreement with assurances will only be provided when agreed to by the participating property owner. However, the Services will make every proposed Agreement available for public review and comment as part of the public evaluation process that is statutorily required for issuance of the enhancement of survival permit associated with the Agreement. This comment period will generally be 30 days but may be longer for very large or programmatic Agreements. The public will also be given other opportunities to review Agreements in certain cases. For example, when the Services receive an Agreement covering a proposed species, and when the Services determine, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule, the comment period for the proposed rule will be extended or reopened to allow for public comments on the Agreement's adequacy in removing or reducing threats to the species. However, the Act requires the Services to issue a final determination within 1 year of issuing a proposed rule to list; the Services will not extend this time frame in order to allow for the completion and/or consideration of an Agreement with assurances. Therefore, the Services may not be able to consider in their final determination Agreements that are not received within a reasonable period of time after issuance of the proposed rule.

Part 8. Do Property Owners Retain Their Discretion?

Nothing in this policy prevents a participating property owner from implementing conservation measures not described in the Agreement, provided such measures are consistent with the conservation measures and conservation goal described in the Agreement. The Services will provide technical advice, to the maximum extent practicable, to the property owner when requested. Additionally, a participating property owner, with good cause, can terminate the Agreement prior to its expiration date, even if the terms and conditions of the Agreement have not been realized. However, the enhancement of survival permit would also be terminated at the same time.

Part 9. What Is the Discretion of All Parties?

Nothing in this policy compels any party to enter a Candidate Conservation Agreement with assurances at any time. Entering an Agreement is voluntary for non-Federal property owners and the Services. Unless specifically noted, an Agreement does not otherwise create or waive any legal rights of any party to the Agreement.

Part 10. Can Agreements Be Transferred?

If a property owner who is a party to a Candidate Conservation Agreement with assurances transfers ownership of the enrolled property, the Services will regard the new property owner as having the same rights and obligations as the original property owner if the new property owner agrees to become a party to the original Agreement. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized if the new property owner maintains the terms and conditions of the original Agreement. If the new property owner does not become a party to the Agreement, the new owner would neither incur responsibilities under the Agreement nor receive any assurances relative to section 9 restrictions resulting from listing of the covered species.

An Agreement must commit the participating property owner to notify the Services of any transfer of ownership at the time of the transfer of any property subject to the Agreement. This will allow the Services the opportunity to contact the new property owner to explain the prior Agreement and to determine whether the new property owner would like to continue the original Agreement or enter a new Agreement. When a new property owner continues an existing Agreement, the Services will honor the terms and conditions of the original Agreement.

Part 11. Is Monitoring Required?

The Services will ensure that necessary monitoring provisions are included in Candidate Conservation Agreements with assurances and associated enhancement of survival permits. Monitoring is necessary to ensure that the conservation measures specified in an Agreement and permit are being implemented and to learn about the effectiveness of the agreed upon conservation measures. In particular, when adaptive management principles are included in an Agreement, monitoring is especially helpful for obtaining the information needed to measure the effectiveness of the conservation program and detect changes in conditions. However, the level of effort and expense required for monitoring can vary substantially among Agreements depending on the circumstances. For many Agreements, monitoring can be conducted by the Services or a State agency and may involve only a brief site inspection and appropriate documentation.

Large-scale or complex Candidate Conservation Agreements with assurances may require more in-depth and comprehensive monitoring. Monitoring programs must be agreed upon and included in the Agreement prior to public review and comment on the Agreement. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. Additionally, these monitoring programs will provide valuable information that the Services can use to evaluate program implementation and success.

Part 12. How Are Cooperation and Coordination With the States and Tribes Described in the Policy?

Coordination between the Services, the appropriate State fish and wildlife agencies, affected Tribal governments, and property owners is important to the successful development and implementation of Candidate Conservation Agreements. The Services will closely coordinate and consult with the affected State fish and wildlife agency and any affected Tribal government that has a treaty right to any fish or wildlife resources covered by an Agreement.

Dated: March 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

Dated: June 10, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15257 Filed 6–11–99; 5:08 pm]

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Thursday
June 17, 1999

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation; Nondisplacement of Qualified Workers—Commercial Items; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

National Aeronautics and Space Administration

48 CFR Part 52

[FAR Case 99–600]

RIN 9000–AI38

Federal Acquisition Regulation; Nondisplacement of Qualified Workers—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to add the clause title, Nondisplacement of Qualified Workers, to the clause concerning Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. This addition would permit inclusion of the clause, by reference, in solicitations and contracts for commercial services, when determined appropriate by the contracting officer.

DATES: Comments should be submitted on or before August 16, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.99–600@gsa.gov.

Please cite FAR case 99–600 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 99–600.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12933 was signed October 20, 1994, by President Clinton and published in the **Federal Register** on October 24, 1994. To obtain public comment and assist in development of implementing regulations, the Department of Labor (DOL) invited comment through a notice of proposed rulemaking in the **Federal Register** on July 18, 1995 (60 FR 36756). The final DOL rule was published in the **Federal Register** on May 22, 1997 (62 FR 28175). An interim FAR rule implementing DOL's rule was published under FAR case 94–610 (FAC 97–01, 62 FR 44802, August 22, 1997). During consideration of the public comments submitted in response to the interim rule, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council identified this additional issue and proposed change. The councils consider this additional change significant enough to warrant additional public comments.

This rule proposes to add the clause title, 52.222–50, Nondisplacement of Qualified Workers, at 52.212–5(c).

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only identifies the FAR clause at 52.222–50, Nondisplacement of Qualified Workers as appropriate for incorporation by reference in certain service contracts when determined so by the contracting officer. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 99–600), in correspondence.

C. Paperwork Reduction Act

This proposed rule will not impose any additional paperwork burdens beyond the information collection and recordkeeping requirements under sections 9.6(c), 9.9(b), and 9.11 of the Department of Labor regulations, 29 CFR part 9, and approved under Office of Management and Budget Control No. 1215–0190.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.212–5 is amended by revising the date of the clause to read ''(DATE)''; at the parenthetical following the introductory text of paragraphs (b) and (c) of the clause by removing the parentheses and adding brackets in their place; and by adding paragraph (c)(6) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(c) * * *

(6) 52.222–50, Nondisplacement of Qualified Workers (Executive Order 12933).

* * * * *

[FR Doc. 99–15144 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

Thursday
June 17, 1999

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, et al.

Federal Acquisition Circular 97–12 Introduction; Federal Acquisition Regulation; Taxpayer Identification Numbers; Use of Brand Name Item Descriptions, et al.; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–12; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–12. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–12 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Taxpayer Identification Numbers	97–003	Olson.
II	Use of Brand Name Item Descriptions	96–018	Moss.
III	SBA's 8(a) Business Development Program (Interim)	98–011	Moss.
IV	Competition Under Multiple Award Task and Delivery Order Contracts	98–007	DeStefano.
V	Application of the Brooks Act	98–023	O'Neill.
VI	Restrictions on the Acquisition of Information Technology	98–306	Nelson.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–12 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Taxpayer Identification Numbers (FAR Case 97–003)

The interim rule published as Item I of the FAC 97–09 is converted to a final rule without change. The rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997; and to clarify the Government requirements for reporting contract and payment information to the Internal Revenue Service (IRS).

Item II—Use of Brand Name Item Descriptions (FAR Case 96–018)

This final rule amends FAR Parts 11, 37, and 52 to clarify guidance for the use of brand name purchase descriptions.

Item III—SBA's 8(a) Business Development Program (FAR Case 98–011)

This interim rule amends FAR Parts 12, 19, and 52 to implement changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation contained in 13 CFR parts 121, 124, and 134 regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

Item IV—Competition Under Multiple Award Task and Delivery Order Contracts (FAR Case 98–007)

This final rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b). The amendment emphasizes that agencies shall use only fair methods when placing orders. For example, the contracting officer shall not employ allocation or designation of any preferred awardee(s) that would result in less than fair consideration being given to all awardees prior to placing each order.

Item V—Application of the Brooks Act (FAR Case 98–023)

This final rule amends FAR Part 36 to remove the reference to the National Imagery and Mapping Agency (NIMA) at FAR 36.601–4(a)(4).

Item VI—Restrictions on the Acquisition of Information Technology (FAR Case 98–306)

This final rule revises FAR 39.101 to implement Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999. Section 622 provides that no appropriated funds may be used to acquire information technology that does not comply with FAR 39.106, unless the agency's Chief Information Officer (CIO) determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998.

Item VII—Technical Amendments

Amendments are being made at 1.106, 9.505, 12.301, 19.803, 19.806, 22.609, 31.205–6, 42.203, 52.204–6, 52.212–1, 52.212–3, 52.213–4, 52.215–2, 52.219–1, 52.219–8, 52.219–14, 52.219–22, 53.214 and 53.215–1 in order to update references and make editorial changes.

FAR Index

The FAR Index is revised and a copy is provided in the looseleaf version of the FAR.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–12 are effective August 16, 1999, except for Items I, III, VI, and VII which are effective June 17, 1999.

Dated: June 8, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: June 7, 1999.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy General Services Administration.

Dated: May 27, 1999.

Tom Luedtke,

Acting Associate Administrator for Procurement National Aeronautics and Space Administration.

[FR Doc. 99–15145 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 13, 14, 15, and 52

[FAC 97–12; FAR Case 97–003; Item I]

RIN 9000–AI14

Federal Acquisition Regulation; Taxpayer Identification Numbers

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final without change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt the interim rule published in the **Federal Register** at 63 FR 58587, October 30, 1998, as a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997, and to clarify the Government requirements for reporting contract and payment information to the Internal Revenue Service (IRS).

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 97–12, FAR case 97–003.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim FAR rule in the **Federal Register** on October 30, 1998 (63 FR 58587), and received no public comments. Therefore, we converted the interim rule to a final rule without change.

The interim rule implemented Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105–32). Subsection (i) amended 31 U.S.C. 7701 by requiring each contractor doing business with the Government to furnish its Taxpayer Identification Number (TIN) and by requiring the Government to disclose its intent to use such number for purposes of collecting and reporting on any delinquent amounts. Section 1022 amended 26 U.S.C. 6041A(d) to add payments for services provided by corporations to the list of payments that the Government is required to report to the IRS using Form 1099.

In addition, the interim rule clarified the requirement for Government agencies to obtain contract information and payment information to facilitate issuance of Forms 1099 and other reports to the IRS. The rule deleted the FAR clauses at 52.214–2, Type of Business Organization—Sealed Bidding, and 52.215–4, Type of Business Organization, since the information requested in these clauses duplicates the information requested in FAR 8.405–2(q), Taxpayer Identification Number, and FAR clauses 52.204–3, Taxpayer Identification, and 52.212–3, Offeror Representations and Certifications Commercial Items.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies an existing requirement for contractors to submit TINs, and requires the Government to advise contractors of the potential debt collection usage of the TIN.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 4, 13, 14, 15, and 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 1, 4, 13, 14, 15, and 52, which was published at 63 FR 58587, October 30, 1998, as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 99–15146 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 37, and 52

[FAC 97–12; FAR Case 96–018; Item II]

RIN 9000–AH85

Federal Acquisition Regulation; Use of Brand Name Item Descriptions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify guidance for the use of brand name purchase descriptions.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–12, FAR case 96–018.

SUPPLEMENTARY INFORMATION:

A. Background

While indicating that performance specifications are the preferred method for describing the Government's needs, this final rule permits the use of brand name or equal purchase descriptions. The rule clarifies how brand name or equal purchase descriptions are structured, *i.e.*, salient functional, physical, or performance characteristics must be part of the description.

The Councils published a proposed rule in the **Federal Register** at 63 FR 63778, November 16, 1998, and considered all comments in the development of this final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects how purchase descriptions may be written for competitive procurements. The Final Regulatory Flexibility Analysis (FRFA) for this rule is summarized as follows:

The objective of the final rule is to provide more comprehensive, uniform FAR guidance on the appropriate use of brand name purchase descriptions. Application of the guidance supports consistent use of such purchase descriptions in Federal acquisitions. The rule will apply to all large and small entities that offer supplies to the Government that are brand name items or are comparable to such items. We anticipate that the selected approach will be the most advantageous to small entities, while achieving the objective of the rule because this approach best enables the Government to express its requirements clearly and describe the degree of flexibility with which offered supplies or services will be evaluated as ''equal.''

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. We invite comments. The Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–12, FAR case 96–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 11 and 52 as set forth below:

1. The authority citation for 48 CFR parts 11 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Redesignate sections 11.104 and 11.105 as sections 11.105 and 11.106, respectively; and add new sections 11.104 and 11.107 to read as follows:

11.104 Use of brand name or equal purchase descriptions.

(a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.

(b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an ''equal'' item must meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

11.107 Solicitation provision.

The contracting officer must insert the provision at 52.211–6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

11.105 [Amended]

2a. Amend the introductory paragraph and paragraph (a) of newly redesignated section 11.105 by removing ''brand-name'' and adding ''brand name'' in its place.

PART 37—SERVICE CONTRACTING

37.602–1 [Amended]

3. Amend section 37.602–1 in the second sentence of paragraph (a) by removing ''(see 11.105)'' and adding ''(see 11.106)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 52.211–6 to read as follows:

52.211–6 Brand Name or Equal.

As prescribed in 11.107, insert the following provision:

Brand Name or Equal (Aug 1999)

(a) If an item in this solicitation is identified as ''brand name or equal,'' the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, or performance characteristics that ''equal'' products must meet are specified in the solicitation.

(b) To be considered for award, offers of ''equal'' products, including ''equal'' products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate ''equal'' products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an ''equal'' product, the offeror shall provide the brand name product referenced in the solicitation.

(End of provision)

[FR Doc. 99–15147 Filed 6–16–99; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 19, and 52

[FAC 97–12; FAR Case 98–011; Item III]

RIN 9000–AI33

Federal Acquisition Regulation; SBA's 8(a) Business Development Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations pertaining to its 8(a) Business Development (8(a)BD) Program.

DATES: Effective June 17, 1999.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before August 16, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Address e-mail comments submitted via the Internet to: farcase.98–011@gsa.gov. Please cite FAC 97–12, FAR case 98–011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–12, FAR case 98–011.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR parts 12, 19, and 52 to conform to recent amendments made by the Small Business Administration (SBA) to their regulations pertaining to the 8(a)BD Program. The SBA published a final rule in the **Federal Register** on June 30, 1998 (63 FR 35726). The SBA rule amended the eligibility procedures for admission to the 8(a)BD and contractual assistance programs. These changes involve administrative matters concerning requirement offerings, contract execution, contract administration, and SBA appeals.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect the interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely addresses changes made by the Small Business Administration (SBA) to 13 CFR parts 121, 124, and 134. The SBA has certified that the changes set forth in its rule will not have a significant economic impact on a substantial number of small entities because the changes do not increase the net number of current 8(a) certified small businesses or the net number of current 8(a) participants by more than 500 to 800 businesses, or less than 1 percent of all small businesses seeking Government contracts. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAR case 98–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made in 13 CFR parts 121, 124, and 134 pertaining to the Small Business Administration (SBA) 8(a)BD Program. The SBA final rule became effective on June 30, 1998. However, pursuant to Pub. L. 98–577 and FAR 1.501, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12, 19, and 52

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 19, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. In section 12.102, amend paragraph (d)(3) by removing ''or''; in (d)(4) by removing the period and adding ''; or''; and add (d)(5) to read as follows:

12.102 Applicability.

* * * * *

(d) * * *

(5) Directly from another Federal agency.

PART 19—SMALL BUSINESS PROGRAMS

3. In section 19.101, amend paragraph (g)(2) by revising the paragraph heading and the first sentence, and adding a sentence to the end of the paragraph to read as follows:

19.101 Explanation of terms.

* * * * *

(g) * * *

(2) *Joint venture—acquisition and property sale assistance.* Concerns bidding on a particular acquisition or property sale as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. * * * The rules governing 8(a) Program joint ventures are described in 13 CFR 124.513.

* * * * *

4. Revise section 19.302(a) to read as follows:

19.302 Protesting a small business representation.

(a) An offeror, the SBA, or another interested party may protest the small business representation of an offeror in a specific offer. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA.

* * * * *

5. In section 19.800, redesignate paragraph (d) as (e); and add new paragraphs (d) and (f) to read as follows:

19.800 General.

* * * * *

(d) The SBA refers to this program as the 8(a) Business Development (BD) Program.

* * * * *

(f) When SBA has delegated its 8(a) Program contract execution authority to an agency, the contracting officer must refer to its agency supplement or other policy directives for appropriate guidance.

19.802 [Amended]

6. Amend section 19.802 by revising the citation ''13 CFR 124.101–113'' to read ''13 CFR 124.101–112''.

7. In section 19.804–2, revise paragraphs (a)(5), (a)(8), (a)(9), and (a)(12) through (a)(14); redesignate paragraph (a)(15) as (a)(16), and add a new paragraph (a)(15) to read as follows:

19.804–2 Agency offering.

(a) * * *

(5) Any special restrictions or geographical limitations on the requirement (for construction, include the location of the work to be performed).

* * * * *

(8) The acquisition history, if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.

(9) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business or HUBZone set-aside and that no other public communication (such as a notice in the Commerce Business Daily) has been made showing the contracting agency's clear intention to set-aside the acquisition for small business or HUBZone small business concerns.

* * * * *

(12) Identification of all known 8(a) concerns, including HUBZone 8(a) concerns, that have expressed an interest in being considered for the specific requirement.

(13) Identification of all SBA field offices that have asked for the acquisition for the 8(a) Program.

(14) A request, if appropriate, that a requirement with an estimated contract value under the applicable competitive threshold be awarded as an 8(a) competitive contract (see 19.805–1(d)).

(15) A request, if appropriate, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole source contract (see 19.805–1(b)).

* * * * *

8. Amend section 19.804–3 by revising paragraph (a); and adding paragraphs (c) and (d) to read as follows:

19.804–3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within 2 days of receipt if the contract is at or below the simplified acquisition threshold. The contracting agency may grant an extension of these time periods. If SBA does not respond to an offering letter within 10 days, the contracting activity may seek SBA's acceptance through the Associate Administrator (AA)/8(a)BD.

* * * * *

(c) For acquisitions not exceeding the simplified acquisition threshold, when the contracting activity makes an offer to the 8(a) Program on behalf of a specific 8(a) firm and does not receive a reply to its offer within 2 days, the contracting activity may assume the offer is accepted and proceed with award of an 8(a) contract.

(d) As part of the acceptance process, SBA will review the appropriateness of the SIC code designation assigned to the requirement by the contracting activity.

(1) SBA will not challenge the SIC code assigned to the requirement by the contracting activity if it is reasonable, even though other SIC codes may also be reasonable.

(2) If SBA and the contracting activity are unable to agree on a SIC code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) Program, appeal the contracting officer's determination to the head of the agency pursuant to 19.810, or appeal the SIC code designation to the SBA Office of Hearings and Appeals under subpart C of 13 CFR part 134.

9. Revise section 19.804–4 to read as follows:

19.804–4 Repetitive acquisitions.

In order for repetitive acquisitions to be awarded through the 8(a) Program, there must be separate offers and acceptances. This allows the SBA to determine—

(a) Whether the requirement should be a competitive 8(a) award;

(b) A nominated firm's eligibility, whether or not it is the same firm that performed the previous contract;

(c) The effect that contract award would have on the equitable distribution of 8(a) contracts; and

(d) Whether the requirement should continue under the 8(a) Program.

10. Add sections 19.804–5 and 19.804–6 to read as follows:

19.804–5 Basic ordering agreements.

(a) The contracting activity must offer, and SBA must accept, each order under a basic ordering agreement (BOA) in addition to offering and accepting the BOA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of orders issued under a specific BOA to exceed the competitive threshold amount in 19.805–1.

(c) Once an 8(a) concern's program term expires, the concern otherwise exits the 8(a) Program, or becomes other than small for the SIC code assigned under the BOA, SBA will not accept new orders for the concern.

19.804–6 Multiple award and Federal Supply Schedule contracts.

(a) Separate offers and acceptances must not be made for individual orders under multiple award or Federal Supply Schedule (FSS) contracts. SBA's acceptance of the original multiple award or FSS contract is valid for the term of the contract.

(b) The requirements of 19.805–1 do not apply to individual orders that exceed the competitive threshold as long as the original contract was competed.

(c) An 8(a) concern may continue to accept new orders under a multiple award or FSS contract even after a concern's program term expires, the concern otherwise exits the 8(a) Program, or the concern becomes other than small for the SIC code assigned under the contract.

11. Amend section 19.805–1 in paragraph (a)(2) by removing ''award price'' and adding ''total value'' in its place; and revise paragraphs (b)(2) and (d) to read as follows:

19.805–1 General.

* * * * *

(b) * * *

(2) SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation.

* * * * *

(d) The SBA Associate Administrator for 8(a) Business Development (AA/8(a)BD) may approve an agency request for a competitive 8(a) award below the competitive thresholds. Such requests will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition. In determining whether a request to compete below the threshold will be approved, the AA/8(a)BD will, in part, consider the extent to which the requesting agency is supporting the 8(a)

Program on a noncompetitive basis. The agency may include recommendations for competition below the threshold in the offering letter or by separate correspondence to the AA/8(a)BD.

19.805–2 [Amended]

12. Amend section 19.805–2 as follows:

a. Remove paragraph (a);

b. Redesignate paragraphs (b) through (e) as (a) through (d), respectively;

c. In new redesignated paragraph (a), remove the words ''the SBA instructions provided under''; and

d. In new redesignated paragraph (d), revise ''13 CFR 124.111(c)'' to read ''13 CFR 124.517''.

19.806 [Amended]

13. In section 19.806, amend paragraph (c) by adding ''within 10 working days'' after the word ''price.''

14. Revise section 19.808–2 to read as follows:

19.808–2 Competitive.

In competitive 8(a) acquisitions subject to part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms. Conducting competitive negotiations among 8(a) firms prior to SBA's formal acceptance of the acquisition for the 8(a) Program may be grounds for SBA's not accepting the acquisition for the 8(a) Program.

15. Revise section 19.809 to read as follows:

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer must refer the matter to SBA for Certificate of Competency consideration under subpart 19.6.

16. Amend section 19.810 by revising paragraphs (a) and (b) to read as follows:

19.810 SBA appeals.

(a) The SBA Administrator may submit the following matters for determination to the agency head if the SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) Program.

(2) A contracting officer's decision to reject a specific 8(a) firm for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) Program.

(3) The terms and conditions of a proposed 8(a) contract, including the contracting activity's SIC code designation and estimate of the fair market price.

(b) Notification of a proposed appeal to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBA is formally notified of the contracting officer's decision. The SBA will provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification of the intent to appeal. The SBA must send the written appeal to the head of the contracting activity within 15 working days of SBA's notification of intent to appeal or the contracting activity may consider the appeal withdrawn. Pending issuance of a decision by the agency head, the contracting officer must suspend action on the acquisition. The contracting officer need not suspend action on the acquisition if the contracting officer makes a written determination that urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

* * * * *

17. In section 19.811–1, revise the last sentence in the introductory text of paragraph (c); and add paragraph (d) to read as follows:

19.811–1 Sole source.

* * * * *

(c) * * * Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

* * * * *

(d) For acquisitions not exceeding the simplified acquisition threshold, the contracting officer may use the alternative procedures in paragraph (c) of this subsection with the appropriate simplified acquisition forms.

19.811–2 [Amended]

18. Amend the introductory text of section 19.811–2(a) by adding ''as a tripartite agreement'' after the word ''appended''.

19. Amend section 19.812 by revising paragraph (d) to read as follows:

19.812 Contract administration.

* * * * *

(d) An 8(a) contract, whether in the base or an option year, must be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm or if the contract is transferred or novated for any reason to another firm, unless the Administrator of the SBA waives the requirement for contract termination (13 CFR 124.515). The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control, except in the case of death or incapacity where the waiver must be submitted within 60 days after such an occurrence. The clauses in the contract entitled ''Special 8(a) Contract Conditions'' and ''Special 8(a) Subcontract Conditions'' require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, the contracting officer must take action immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer should immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head must either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer must terminate the contract for convenience upon receipt of a written request by the SBA. This requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–18 [Amended]

20. Amend section 52.219–18 by revising the date of the clause to read ''(JUNE 1999)''; by removing paragraph (a)(1) of the clause; and redesignating paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2), respectively.

[FR Doc. 99–15148 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 97–12; FAR Case 98–007; Item IV]

RIN 9000–AI08

Federal Acquisition Regulation; Competition Under Multiple Award Task and Delivery Order Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule. The final rule amends the Federal Acquisition Regulation (FAR) to clarify the procedures governing placement of orders under multiple award indefinite-delivery contracts.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–12, FAR case 98–007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b). The rule emphasizes that agencies must use only fair methods when placing orders. For example, the contracting officer must not employ allocation or designation of any preferred awardee(s) that would result in less than fair consideration being given to all awardees prior to placing each order.

The Councils published a proposed rule in the **Federal Register** at 63 FR 48416, September 9, 1998.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule merely amends the FAR to clarify the existing prohibition against allocation of orders placed under multiple award contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 16.505 by revising paragraph (b)(1); by redesignating paragraphs (b)(2), (b)(3), and (b)(4) as (b)(4), (b)(5), and (b)(6), respectively and adding new paragraphs (b)(2) and (b)(3); and by revising newly designated paragraphs (b)(4)(i) and (b)(4)(ii) to read as follows:

16.505 Ordering.

* * * * *

(b) *Orders under multiple award contracts.* (1) Except as provided in paragraph (b)(4) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee must be provided a fair opportunity to be considered for each order in excess of $2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers must exercise broad discretion. The contracting officer, in making decisions on the award of any individual task order, should consider factors such as—

(i) Past performance on earlier tasks under the multiple award contract;

(ii) Quality of deliverables;

(iii) Cost control;

(iv) Price;

(v) Cost; or

(vi) Other factors that the contracting officer believes are relevant.

(2) In evaluating past performance on individual orders, the procedural requirements in subpart 42.15 are not mandatory.

(3) The contracting officer must set forth in the solicitation and contract the procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of part 6. However, methods, such as allocation or designation in any way of any preferred awardee(s), that would result in less than fair consideration being given to all awardees prior to placing each order, are prohibited. Formal evaluation plans or scoring of quotes or offers is not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(4) * * *

(i) The agency need for the supplies or services is so urgent that providing the opportunity would result in unacceptable delays;

(ii) Only one contractor is capable of providing the supplies or services at the level of quality required because the supplies or services are unique or highly specialized;

* * * * *

[FR Doc. 99–15149 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 36

[FAC 97–12; FAR Case 98–023; Item V]

RIN 9000–AI34

Federal Acquisition Regulation; Application of the Brooks Act

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove a reference to the National Imagery and Mapping Agency (NIMA).

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–12, FAR case 98–023.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 36 to remove the reference to the National Imagery and Mapping Agency (NIMA) at FAR 36.601–4(a)(4). In accordance with Section 8101 of the National Defense Appropriations Act for Fiscal Year 1999 (Pub. L. 262), except for services critical to national security, NIMA must use the procedures in FAR Subpart 36.6 when using fiscal year 1999 funds to award contracts for mapping, charting, and geodesy activities, rather than the provisions in FAR Parts 13, 14, and 15. Therefore, although this is an annual appropriations requirement which affects NIMA only when using fiscal year 1999 funds, it is appropriate to remove the reference to NIMA as exemplifying the type of mapping services that must not be procured pursuant to FAR Subpart 36.6.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–12, FAR case 98–023), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 36

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 36 as set forth below:

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1. The authority citation for 48 CFR part 36 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

36.601–4 [Amended]

2. Amend the fourth sentence of section 36.601–4(a)(4) by removing the words ''such as those typically performed by the National Imagery and Mapping Agency''.

[FR Doc. 99–15150 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 97–12; FAR Case 98–306; Item VI]

RIN 9000–AI37

Federal Acquisition Regulation; Restrictions on the Acquisition of Information Technology

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Division A, Section 101(h), Title VI, section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–12, FAR case 98–306.

SUPPLEMENTARY INFORMATION:

A. Background

Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105–277) was effective upon its enactment on October 21, 1998. Section 622 provides that agencies may not use appropriated funds to acquire information technology that does not comply with FAR 39.106, unless the agency's Chief Information Officer (CIO) determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998. The CIO must send to the Office of Management and Budget any waivers granted.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–12, FAR case 98–306), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR part 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 39.101 by designating the existing paragraph as ''(b)'', and adding paragraph (a) to read as follows:

39.101 Policy.

(a) Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105–277) requires that agencies may not use appropriated funds to acquire information technology that does not comply with 39.106, unless the agency's Chief Information Officer determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998. The Chief Information Officer must send to the Office of Management and Budget a copy of all waivers for forwarding to Congress.

* * * * *

[FR Doc. 99–15151 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 12, 19, 22, 31, 42, 52, and 53

[FAC 97–12; Item VII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 9, 12, 19, 22, 31, 42, 52, and 53

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 9, 12, 19, 22, 31, 42, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 9, 12, 19, 22, 31, 42, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by—

a. Removing the FAR segment entries at 28.106–1(e) and 28.106–1(n) and their corresponding OMB Control Numbers;

b. Revising the FAR segment entry ''52.223–8'' to read ''52.223–9'';

c. At entry 52.228–2 by removing ''and 9000–0119'';

e. At entry 52.228–16 by removing ''and 9000–0119''; and

f. Adding entry 52.228–12 to read as follows:;

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
* * * * *	
52.228–12	9000–0135

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.505 [Amended]

3. Amend section 9.505 in paragraph (b)(1) by removing ''(as defined in 3.104–3)''.

PART 12—ACQUISITION OF COMMERCIAL ITEMS 12.301 [Amended]

4. Amend section 12.301 in the first sentence of paragraph (b)(3) by revising the parenthetical to read ''(see Block 27, SF 1449)''.

PART 19—SMALL BUSINESS PROGRAMS

19.803 [Amended]

5. Amend section 19.803 by revising the parenthetical at the end of paragraph (c) to read ''(but see 19.800(e)).''

19.806 [Amended]

6. Amend section 19.806 in the second sentence of paragraph (a) by removing the word ''certified''.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

7. Revise section 22.609 to read as follows:

22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.

Geographic jurisdictions of the following regional offices of the DoL, Wage and Hour Division, are shown here, and contracting officers should contact them in all situations required by this subpart, unless otherwise specified:

(a) The Region I and Region II office located in New York, New York, has jurisdiction for Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(b) The Region III office located in Philadelphia, Pennsylvania, has jurisdiction for Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

(c) The Region IV office located in Atlanta, Georgia, has jurisdiction for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(d) The Region V and Region VII office located in Chicago, Illinois, has jurisdiction for Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin.

(e) The Region VI and Region VIII office located in Dallas, Texas, has jurisdiction for Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

(f) The Region IX and Region X office located in San Francisco, California, has jurisdiction for Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

8. Amend section 31.205–6 in the second sentence of paragraph (o)(6) by removing the word ''certified''.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.203 [Amended]

9. Amend section 42.203 in the third sentence by removing ''DCMC–AQBF'' and adding ''DCMCC–F'', and revising the ZIP code to read ''22060–6221''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–6 [Amended]

10. Amend section 52.204–6 by revising the provision date to read ''(JUNE 1999)''; and by removing from the first sentence of paragraph (c) of the provision ''http://www.dnb.com/'' and adding ''http://www.customerservice@dnb.com'' in its place.

52.212–1 [Amended]

11. Amend section 52.212–1 by revising the provision date to read ''(JUNE 1999)''; and by removing from the next-to-the-last sentence in paragraph (j) of the provision ''http://www.dnb.com/'' and adding ''http://www.customerservice@dnb.com'' in its place.

52.212–3 [Amended]

12. Amend section 52.212–3 by revising the provision date to read ''(JUNE 1999)''; and by removing '', ☐ is not'' from paragraph (c)(4) of the provision.

52.213–4 [Amended]

13. Amend section 52.213–4 by—

a. Revising the clause date to read ''(JUNE 1999)'';

b. In paragraph (a)(2)(vi) of the clause by revising ''(OCT 1995)'' to read ''(DEC 1998)'';

c. In paragraph (a)(2)(vii) of the clause by revising ''(OCT 1995)'' to read ''(OCT 1998)'';

d. In paragraph (b)(1)(ii) of the clause by revising ''(APR 1984)'' to read ''(FEB 1999)''; and

e. In (b)(1)(v) of the clause by revising ''(APR 1998)'' to read ''(JAN 1999)''.

14. Amend section 52.215–2 by revising the date of the clause, to read ''(June 1999)'', revising paragraphs (f)(1) and (f)(2) of the clause, and Alternate III to read as follows:

52.215–2 Audit and Records—Negotiation.

* * * * *

Audit and Records—Negotiation (June 1999)

* * * * *

(f) * * *

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

* * * * *

Alternate III (June 1999). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

52.219–1 [Amended]

15. Amend section 52.219–1 in the introductory text of Alternate I by revising ''19.307(a)(1)'' to read ''19.307(a)(2)''.

52.219–8 [Amended]

16. Amend section 52.219–8 by revising the date of the clause to read ''(JUNE 1999)''; and by removing from paragraph (c)(4)(ii) of the clause ''women; and'' and adding ''women.'' in its place.

17. Amend section 52.219–14 by revising the introductory paragraph to read as follows:

52.219–14 Limitations on Subcontracting.

As prescribed in 19.508(e) or 19.811–3(e), insert the following clause:

* * * * *

52.219–22 [Amended]

18. Amend section 52.219–22 in the introductory text of Alternate I by revising ''19.306(b)'' to read ''19.307(b)''.

PART 53—FORMS

53.214 [Amended]

19. Amend section 53.214 in paragraph (c) by removing the last sentence.

53.215–1 [Amended]

20. Amend section 53.215–1 in paragraph (c) by removing the last sentence.

[FR Doc. 99–15152 Filed 6–16–99; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–12 which amend the FAR. The rule marked with an asterisk (*) indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–12 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225.

LIST OF RULES IN FAC 97–12

Item	Subject	FAR case	Analyst
I	Taxpayer Identification Numbers	97–003	Olson.
II	* Use of Brand Name Item Descriptions	96–018	Moss.
III	SBA's 8(a) Business Development Program (Interim)	98–011	Moss.
IV	Competition Under Multiple Award Task and Delivery Order Contracts	98–007	DeStefano.
V	Application of the Brooks Act	98–023	O'Neill

LIST OF RULES IN FAC 97–12—Continued

Item	Subject	FAR case	Analyst
VI	Restrictions on the Acquisition of Information Technology	98–306	Nelson.

Item I—Taxpayer Identification Numbers (FAR Case 97–003)

The interim rule published as Item I of the FAC 97–09 is converted to a final rule without change. The rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997; and to clarify the Government requirements for reporting contract and payment information to the Internal Revenue Service (IRS).

Item II—Use of Brand Name Item Descriptions (FAR Case 96–018)

This final rule amends FAR Parts 11, 37, and 52 to clarify guidance for the use of brand name purchase descriptions.

Item III—SBA's 8(a) Business Development Program (FAR Case 98–011)

This interim rule amends FAR Parts 12, 19, and 52 to implement changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation contained in 13 CFR parts 121, 124, and 134 regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

Item IV—Competition Under Multiple Award Task and Delivery Order Contracts (FAR Case 98–007)

This final rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b). The amendment emphasizes that agencies shall use only fair methods when placing orders. For example, the contracting officer shall not employ allocation or designation of any preferred awardee(s) that would result in less than fair consideration being given to all awardees prior to placing each order.

Item V—Application of the Brooks Act (FAR Case 98–023)

This final rule amends FAR Part 36 to remove the reference to the National Imagery and Mapping Agency (NIMA) at FAR 36.601–4(a)(4).

Item VI—Restrictions on the Acquisition of Information Technology (FAR Case 98–306)

This final rule revises FAR 39.101 to implement Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999. Section 622 provides that no appropriated funds may be used to acquire information technology that does not comply with FAR 39.106, unless the agency's Chief Information Officer (CIO) determines that noncompliance with 39.106 is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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Thursday
June 17, 1999

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Approval of Tungsten-Iron and Tungsten-Polymer Shots and Temporary Approval of Tungsten-Matrix and Tin Shots as Nontoxic for Hunting Waterfowl and Coots; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF65

Migratory Bird Hunting; Final Approval of Tungsten-Iron and Tungsten-Polymer Shots and Temporary Approval of Tungsten-Matrix and Tin Shots as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to grant final approval of tungsten-iron and tungsten-polymer shots as nontoxic for hunting waterfowl and coots. We also propose to grant temporary approval of tungsten-matrix and tin shots as nontoxic for hunting waterfowl and coots during the 1999–2000 hunting season only. Acute toxicity studies reveal no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with either tungsten-iron, tungsten-polymer, tungsten-matrix, or tin shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tungsten-iron and tungsten-polymer administered to adult mallards did not adversely affect them or the offspring they produced. We will not consider final approval of tungsten-matrix and tin shots until all required reproductive/chronic toxicity tests are successfully completed and the results are received and approved by the Director. Tungsten-iron and tungsten-polymer shots are produced by Federal Cartridge Company (Federal) of Anoka, Minnesota. Tungsten-matrix shot is produced by Kent Cartridge Company (Kent) of Kearneysville, West Virginia. Tin shot is produced by the International Tin Research Institute (ITRI) of Uxbridge, Middlesex, Great Britain.

DATES: Comments on the proposed rule must be received no later than July 19, 1999.

ADDRESSES: Comments may be sent to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634-ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved as nontoxic. We previously granted temporary approval for tungsten-iron shot during the 1997–98 (August 13, 1997; 62 FR 43444) and 1998–99 (October 7, 1998; 63 FR 54016) migratory bird hunting seasons. We also granted temporary approval for tungsten-polymer (October 7, 1998; 63 FR 54022) and tungsten-matrix (December 8, 1998; 63 FR 67619) shots during the 1998–99 migratory bird hunting season. Compliance with the use of nontoxic shot has increased over the last few years. We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

Federal Cartridge Company's (Federal) tungsten-iron shot is an alloy of approximately 55 percent tungsten and 45 percent iron, by weight, and has a density of approximately 10.3 g/cm^3. Tungsten-polymer shot is a matrix of Nylon 6 or 11 polymer surrounding particles of elemental tungsten. Shot made from this material has a density of approximately 11.2 g/cm^3 or approximately the density of lead. The shot will contain approximately 95.5 percent tungsten and 4.5 percent Nylon 6 or 11 by weight.

Kent's original candidate shot was fabricated from what is described in their application as a mixture of powdered metals in a plastic matrix whose density is comparable to that of lead. All component metals are present as elements, not compounds. The tungsten-matrix material from which pellets are formulated has a specific gravity of 9.8 g/cm^3 and is composed of 88 percent tungsten, 4 percent nickel, 2 percent iron, 1 percent copper, and 5 percent polymers by mass. After consultation with us, Kent has subsequently changed the composition of their shot and removed nickel and copper. The new shot material being considered has a density of 10.7 g/cm^3 and is composed of approximately 95.9 percent tungsten and 4.1 percent polymers.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot material has a density of approximately 7.29 g/cm^3, and is 99.9 percent tin, with a low level of iron pickup due to the steel production equipment.

Each of Federal's applications for tungsten-iron and tungsten-polymer include a description of the shot, a toxicological report (Barr 1996), results of a 30-day dosing study of the toxicity of the shot in game-farm mallards (Bursian *et al.* 1996a, Bursian *et al.* 1996b), and results of a 150-day reproductive/chronic toxicity study (Bursian *et al.* 1999). Kent's application for tungsten-matrix includes a description of the shot, a toxicological report (Thomas 1997a), and results of a 30-day toxicity study (Wildlife International, Ltd. 1998a). The tin shot application from ITRI contains a description of the shot, a toxicological report (Thomas 1997b), and results of a 30-day toxicity study (Wildlife International, Ltd. 1998b). Toxicological reports for each shot type incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration).

Toxicity Information: There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten and iron. Elemental tungsten and iron are virtually insoluble and are therefore expected to be relatively nontoxic. Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten, there appears to be no basis for concern of toxicity to wildlife for either candidate shot via ingestion by fish or mammals (Bursian *et al.* 1996b, Gigiena 1983, Karantassis 1924, Patty 1982, Industrial Medicine 1946). Detailed reviews of the toxicological impacts of different tin compounds have been conducted by Eisler (1989) and Cooney (1988). Both reviews indicate that elemental tin is non-toxic to animals. Tin shot designed for waterfowl hunting is utilized in several European countries and no reports exist that suggest that tin shot is causing toxicity problems for wildlife in those countries.

The potential toxicity of nylon compounds due to degradation is primarily associated with the stabilizers, antioxidants, plasticizers, and unreacted prepolymers. Residual caprolactum has been found in some commercial Nylon 6 products, but little concern regarding this compound has been developed (Patty, 1982). The toxicity of Nylon 6 and 11 are negligible due to their insolubilities.

Environmental Fate and Transport: Tungsten is insoluble in water and therefore not mobile in hypergenic environments. Tungsten is very stable

with acids and does not easily complex. Preferential uptake by plants in acid soil suggests uptake of tungsten in the anionic form associated with tungsten minerals rather than elemental tungsten (Kabata and Pendias 1984). Tin pellets will undergo slow surface oxidation to form hydrated tin oxide, which is extremely insoluble in water (Lide 1990). Therefore dissolution will be slow, and highly localized aqueous concentrations will not arise. This means that elemental tin will over time remain largely in the same inorganic form as when it is discharged. Tin pellets discharged into wetlands where sulphur ions are released during organic decomposition would become coated with tin sulphide, which is highly insoluble in water and resistant to aquatic hydrolysis (Hoiland 1995).

Environmental Concentration: The effective environmental concentration (EEC) for a terrestrial ecosystem was calculated based on 69,000 shot per hectare (Pain 1990), assuming complete erosion of material in 5 cm of soil. For tungsten-iron shot, the EEC for tungsten in soil was calculated at 32.9 mg/kg. For tungsten-polymer shot, the EECs for tungsten and Nylon (6 and 11) in soil are 58.3 mg/kg and 2.7 mg/kg, respectively. The EECs for tungsten and the 2 polymers found in tungsten-matrix are 25.7 mg/kg, 4.2 mg/kg, and 0.14 mg/kg, respectively. The EEC for tin in soil is 19.3 g/m^3.

The environmental concentration (EEC) for an aquatic ecosystem was calculated assuming complete erosion of the shot in one cubic foot of water. For tungsten-iron shot, the EEC in water for tungsten was 10.5 mg/L. For tungsten-polymer shot, the EECs in water for tungsten and Nylon (6 and 11) are 18.7 mg/L and 0.9 mg/L, respectively. The EECs in water for tungsten and the 2 polymers found in tungsten-matrix are 4.2 mg/L, 0.2 mg/L, and 0.02 mg/L, respectively. The EEC in water for tin is 19.3 mg/L.

Effects on Birds: An extensive literature review in each application provided information on the toxicity of elemental tungsten and tin to waterfowl and other birds. Ringelman et al. (1993) orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03 g average weight) tungsten-bismuth-tin (TBT) pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial, gross lesions were not observed during the postmortem examinations, histopathological examinations did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that TBT shot presented virtually no potential for acute intoxication in mallards.

Kraabel *et al.* (1996) assessed the effects of embedded TBT shot on mallards and concluded that TBT was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to TBT shot were localized and had no detectable systemic effects on mallard health.

Nell (1981) fed laying hens (*Gallus domesticus*) 0.4 or 1.0 g/kg tungsten in a commercial mash for five months to assess reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 mg/g liver. At that concentration, xanthine dehydrogenase activity was zero.

Ringelman *et al.* (1992) conducted a 32-day acute toxicity study which involved dosing game-farm mallards with a shot alloy of tungsten-bismuth-tin (TBT), which was 39, 44.5 and 16.5 percent by weight, respectively. No dosed birds died during the trial, and behavior was normal. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. This study concluded that ''* * * TBT shot presents virtually no potential for acute intoxication in mallards under the conditions of this study.''

Several studies have been conducted in which pellets made of tin or tin alloys have been placed inside the digestive tract or tissues of ducks to determine if toxic effects occur. Grandy *et al.* (1968) and the Huntingdon Research Centre (1987) conducted 30- and 28-day, respectively, acute toxicity tests on mallard ducks and reported that all treatment ducks survived with insignificant weight loss or development of pathological lesions. The potential for bismuth-tin (BT) shot to produce toxicological effects in ducks during reproduction has been investigated under both acute and chronic testing conditions. Tin as a 2% component of the tested shot, did not pose a toxic risk to ducks when fed a nutritionally-imbalanced, corn-based diet. Neither has BT shot been shown to pose an adverse risk to the health of ducks, the reproduction by male and female birds, nor the survival of ducklings over the long term (Sanderson *et al.* 1997a, b).

Nylon 6 is the commercially important homopolymer of caprolactum. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson 1977). Few data exist on the toxicity of Nylon 6 in animals. Most toxicity studies are related to thermal degradation products and so are not relevant to the exposure of wildlife to shot containing nylon. Montgomery (1982) reported that feeding Nylon 6 to rats at a level of 25 percent of the diet for 2 weeks caused a slower rate of weight gain, presumably due to a decrease in food consumption and feed efficiency. However, the rats suffered no anatomic injuries due to the consumption of nylon.

The two plastic polymers used in tungsten-matrix shot act as a physical matrix in which the tungsten is distributed as ionically-bound fine particles. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson 1977). A literature review did not reveal studies in which either of the two polymers were evaluated for toxicity in birds.

Acute Toxicity Studies: Federal contracted with Michigan State University—Department of Animal Science, to conduct an acute toxicity study of tungsten-iron and tungsten-polymer. Both Kent and ITRI contracted with Wildlife International Ltd. to conduct an acute toxicity study of tungsten-matrix and tin shots, respectively. The acute toxicity test is a short-term (30-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood hematocrit, and organ analysis are recorded.

Tungsten-iron and tungsten-polymer: The 30-day dosing study revealed no adverse effects when mallards were dosed with either 8 BB size tungsten-iron shot or 8 BB size tungsten-polymer shot and monitored over a 30-day period (Bursian *et al.* 1996a, Bursian *et al.* 1996b). Eight male and 8 female adult mallards were dosed with either 8 No. 4 steel shot, 8 No. 4 lead shot, 8 BB size tungsten-iron shot, or 8 BB size tungsten-polyer shot and observed over a 30-day period. An additional 8 males and 8 females received no shot. Fifty percent of the lead-dosed birds (5 males and 3 females) died during the 30-day test while there were no mortalities in

the other groups. Lead-dosed birds were the only ones to display green excreta, lethargy, and ataxia. Body weights were not significantly altered by any of the treatments, although lead-dosed birds which died during the trial lost an average of 30 percent of their body weight. Hematocrit, hemoglobin concentrations, and ALAD activity were significantly depressed at day 15 in the lead-dosed females, while lead-dosed males had significantly depressed hematocrit and hemoglobin concentration compared with the other four groups. There were no significant differences in these whole-blood parameters at day 30. Three tungsten-polymer-dosed males developed mild biliary stasis. The authors attributed this to the intubating of mallards with 8 BBs of tungsen-polymer shot inducing a pathological condition—however slight—that was not found in the control birds. No other histopathological lesions were found. Tungsten was detected in the femur of two tungsten-polymer-dosed females and the kidneys of two tungsten-polymer-dosed birds; in both tissues, concentrations were only slightly above detection limits. In general, no adverse effects were seen in mallards given 8 BB-size tungsten-polymer shot and monitored over a 30-day period.

Tungsten-matrix: Kent's 30-day dosing study (Wildlife International Ltd. 1998a) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 tungsten-matrix; whereas the control group received no shot. The 2 tungsten-matrix treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tungsten-matrix-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tungsten-matrix treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tungsten-matrix shot and monitored over a 30-day period. Tungsten was found to be below the limit of detection in all samples of femur, gonad, liver, and kidney from treatment groups.

Tin: ITRI's 30-day dosing study (Wildlife International Ltd. 1998b) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 tin shot; whereas the control group received no shot. The 2 tin treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tin-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tin treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tin shot and monitored over a 30-day period. No levels of tin above the limit of detection were observed in any tissues collected from either tin treatment group.

Reproductive/chronic Toxicity Study: Federal contracted with Michigan State University—Department of Animal Science, to conduct an a reproductive/chronic toxicity studies for both tungsten-iron and tungsten-polymer shot types. The reproductive/chronic toxicity study is a long-term (150-day) study where ducks are dosed with shot and fed commercially available duck food. Survival, body weight, blood hematocrit, organ analysis, and reproductive performance are recorded.

Tungsten-iron and Tungsten-polymer: The reproductive/chronic toxicity study revealed no adverse effects when mallards were dosed with either 8 No. 4 size tungsten-iron shot, or 8 No. 4 size tungsten-polymer shot, and monitored over a 150-day period (Bursian et al. 1999). Sixteen male and 16 female adult mallards were orally dosed with either 8 No. 4 steel shot, 8 No. 4 tungsten-iron shot, or 8 No. 4 tungsten-polymer shot. An additional 6 male and 6 female mallards were dosed with 8 No. 4 lead shot. All lead-dosed birds died by day 25 of the study, whereas no mortalities occurred in the other test groups. Lead-dosed birds had significantly decreased hematocrit, hemoglobin concentration and whole-blood delta aminolevulinic dehydratase activity on day 7 of the study. Mallards dosed with tungsten-iron or tungsten-polymer shot had occasional significant differences in hematocrit and plasma chemistry values when compared to steel-dosed mallards over the 150-day period, but these changes were within the normal range reported for mallards and were not considered to be deleterious. Relative kidney, heart, brain and gizzard weights of lead-dosed birds were significantly greater in comparison to relative weights of those organs in the other 3 treatment groups. Marked liver hemosiderosis was present in all steel and tungsten-dosed males, in 5 of 8 steel- and 3 of 8 tungsten-iron-dosed females, and in 1 tungsten-polymer-dosed male examined. Small amounts of tungsten were detected in gonad and kidney samples from males and females, in femur samples of males, and in liver samples from females dosed with tungsten-polymer shot. Higher concentrations of tungsten were detected in femur, gonad, kidney, and liver samples from tungsten-iron-dosed ducks. The rate of shot erosion was 99% for tungsten-polymer, 72% for tungsten-iron, 55% for steel, and 37% for lead. There were no significant differences in percent egg production, and percent fertility and hatchability of eggs from tungsten-iron- and tungsten-polymer-dosed ducks when compared to steel-dosed ducks. There were no biological differences in percent survivability and body weight of ducklings from tungsten-iron- or tungsten-polymer-dosed ducks when compared to ducklings from steel-dosed ducks. The hematocrit of ducklings from tungsten-iron-dosed ducks was slightly but significantly lower when compared to ducklings from steel-dosed ducks. Histological examination of duckling kidneys and liver indicated no abnormalities. Tungsten was detected in 25%, 9%, and 13% of the femur, kidneys, and liver samples, respectively, from ducklings of the tungsten-iron and tungsten-polymer groups. Overall, results of this study indicated that tungsten-iron and tungsten-polymer shot repeatedly administered to adult mallards did not adversely affect them or the offspring they produced during the 150-day trial.

Nontoxic Shot Approval

The first condition for nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests (Tiers 1, 2, and 3) discussed above, we conclude that tungsten-iron and tungsten-polymer shot does not pose a significant danger to migratory birds or other wildlife and their habitats. Based on the results of toxicological reports and acute toxicity tests (Tier 1 and 2), we conclude that tungsten-matrix and tin shots do not appear to pose a significant danger to migratory birds or other wildlife and their habitats. However, final approval of either shot type will not be considered until all required reproductive/chronic toxicity tests have been successfully completed and our Director has reviewed and approved the results.

The second condition for approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and incorporated this requirement in the nontoxic shot approval process that was published on December 1, 1997 (62 FR 63608). Federal has documented that tungsten-iron and tungsten-polymer shots meet this requirement. Kent and ITRI have documented that tungsten-matrix and tin shot, respectively, meet this requirement.

The third condition for approval involves enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated that approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated in the nontoxic shot approval process that was published on December 1, 1997 (62 FR 63608). Tungsten-iron shotshells can be drawn to a magnet as a simple field detection method. Electronic field testing devices can distinguish shells containing tungsten-polymer and tungsten-matrix from shells containing lead. At the present time, we are not aware of any noninvasive field testing devices for distinguishing shells containing tin shot from those containing lead. We will not consider final approval of tin shot until such a device, or other noninvasive field testing method, has been developed for identifying tin shot.

This proposed rule would amend 50 CFR 20.21(j) by approving tungsten-iron and tungsten-polymer shots as nontoxic for migratory bird hunting. It is based on the toxicological reports, acute toxicity studies, and reproductive/chronic toxicity studies submitted by Federal. Results of these studies indicate the absence of any deleterious effects of tungsten-iron or tungsten-polymer shot when ingested by captive-reared mallards or to the ecosystem. We also propose to grant temporary approval to tungsten-matrix and tin shots for the 1999–2000 hunting season only. Temporary approval would be based on the toxicological reports and acute toxicity studies submitted by Kent and ITRI. We have reduced the public comment period from 60 days to 30 days in order to complete the rulemaking process prior to the start of the hunting season. This will facilitate planning efforts by vendors and State wildlife agencies.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared draft Environmental Assessments (EA) in May, 1999. The EAs are available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' We are completing a Section 7 consultation under the ESA for this proposed rule. The result of our consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. This rule would approve additional types of nontoxic shot that may be sold and used to hunt migratory birds; this rule would provide 4 types of shot in addition to the existing 2 that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Executive Order 12866

This rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Section 20.21 may be written in plain language format in the final rule.

Paperwork Reduction Act

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. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018–0067; expires 06/30/2000) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Authorship

The primary author of this proposed rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

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

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising the section title, revising paragraph (j) introductory text, revising paragraphs (j)(2) and (j)(3), and removing paragraph (j)(4) to read as follows:

20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (55 parts tungsten: 45 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that:

(1) * * *

(2) Tungsten-matrix shot (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1999–2000 hunting season only, and

(3) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1999–2000 hunting season only.

Dated: June 8, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–15339 Filed 6–16–99; 8:45 am]

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Federal Register

Thursday
June 17, 1999

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 1999–2000 hunting season. This supplement to the proposed rule provides the regulatory schedule; announces the Service Migratory Bird Regulations Committee and Flyway Council meetings; and describes the proposed regulatory alternatives for the 1999–2000 duck hunting seasons and other proposed changes from the 1998–99 hunting regulations.

DATES: The Service Migratory Bird Regulations Committee will consider and develop proposed regulations for early-season migratory bird hunting on June 22 and 23, and for late-season migratory bird hunting on August 3 and 4. All meetings will commence at approximately 8:30 a.m. To comment on the proposed regulatory alternatives for the 1999–2000 duck hunting seasons, you must submit your comments by July 2, 1999. To comment on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons, you must do so by July 27, 1999. To comment on the proposed late-season frameworks, you must do so by September 7, 1999.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1999

On May 3, 1999, we published in the **Federal Register** (64 FR 23742) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under § 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish early-season frameworks and final regulatory alternatives for the 1999–2000 duck hunting seasons in mid-July and late-season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 1999, and those for late seasons on or about September 27, 1999.

Service Migratory Bird Regulations Committee Meetings

The June 22–23 meetings will review information on the current status of migratory shore and upland game birds and develop 1999–2000 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we will review and discuss preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 1999–2000 regular waterfowl seasons.

The August 3–4 meetings will review information on the current status of waterfowl and develop 1999–2000 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Director on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of the Flyway Councils:

Atlantic Flyway, July 29–30, Key West, Florida, (Hilton Resort and Marina)
Mississippi Flyway, July 27–29, Merrillville, Indiana (Radisson)
Central Flyway, July 29–30, Bartlesville, Oklahoma (hotel to be announced)
Pacific Flyway, July 30, Reno, Nevada (Peppermill Hotel)

Although agendas are not yet available, these meetings usually commence at 8:30 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking contains the proposed regulatory alternatives for the 1999–2000 duck hunting seasons. We have included and addressed all comments and recommendations received through May 24, 1999, relating to the development of these alternatives.

This supplemental rulemaking also describes other recommended changes based on the preliminary proposals published in the May 3, 1999, **Federal Register**. We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals.

This supplement does not include recommendations or comments that simply support or oppose preliminary proposals and provide no recommended alternatives. We will consider these comments later in the regulations-development process. We will publish responses to all proposals and written comments when we develop final frameworks.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 3, 1999, **Federal Register**.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. The categories correspond to previous published issues/discussion and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic Flyway Council recommended continued use of the 1998–99 duck hunting packages for the 1999–2000 season. They further recommended the

Service not allow framework date extensions in any States during the 1999–2000 season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service use the 1997–98 regulations packages for the 1999–2000 duck season, including frameworks dates from the Saturday nearest October 1 to the Sunday nearest January 20.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the Service continue use of the 1998–99 regulatory packages for the 1999–2000 season and further recommended deletion of the ''very restrictive'' alternative and modification of the framework opening and closing dates to the Saturday closest to September 23 to January 31 for all alternatives with no offsets (see further discussion in B. Framework Dates).

The Central Flyway Council recommended the Service continue use of the 1998–99 regulatory packages for the 1999–2000 season with several modifications. The Council recommended opening framework dates of the Saturday closest to September 24 in the ''liberal'' and ''moderate'' regulatory alternatives with no offsets. The framework closing date would remain the Sunday closest to January 20. Additionally, the Council recommended that no additional changes be allowed to the packages for a five-year period (see further discussion in B. Framework Dates).

The Pacific Flyway Council recommended framework dates of the Saturday closest to September 23 to January 31 without offsets in the ''liberal'' alternative and with offsets in the ''moderate'' alternative (as long as the offset does not exceed 7 days with a season of not less that 79 days in the Pacific Flyway). For the ''restrictive'' and ''very restrictive'' alternatives, the Council recommended maintaining current framework dates (see further discussion in B. Framework Dates). The Council also recommended maintaining the current mallard bag limits and preserving the traditional differences in harvest opportunity both within and between Flyways.

Service Response: For the 1999–2000 regular duck hunting season, we propose the four regulatory alternatives detailed in the accompanying table. Alternatives are specified for each Flyway and are designated as ''VERY RES'' for the very restrictive, ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will announce final regulatory alternatives and propose a specific regulatory alternative at the conclusion of the early-season regulations meetings in late June when survey data on waterfowl population and habitat status are available. Public comments will be accepted until July 2, 1999, and should be sent to the address under the caption **ADDRESSES.**

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council recommended that the Service not allow framework date extensions in any States during the 1999–2000 season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended no change in the framework dates from the 1997–98 regulatory alternatives.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended modification of the framework opening and closing dates to the Saturday closest to September 23 to January 31 for all regulatory alternatives with no offsets.

The Central Flyway Council recommended an opening framework date of the Saturday closest to September 24 in the ''liberal'' and ''moderate'' regulatory alternatives with no offsets. The framework closing date would remain the Sunday closest to January 20.

The Pacific Flyway Council recommended framework dates of the Saturday closest to September 23 to January 31 without offsets in the ''liberal'' alternative and with offsets in the ''moderate'' alternative (as long as the offset does not exceed 7 days with a season of not less that 79 days in the Pacific Flyway). For the ''restrictive'' and ''very restrictive'' alternatives, the Council recommended maintaining current framework dates.

Service Response: After considerable public debate concerning framework dates for the 1998–99 hunting season, in an August 5, 1998, **Federal Register** (63 FR 41926), we chose not to extend the framework closing date beyond January 20 in the Atlantic Flyway and the Sunday nearest January 20 in the Mississippi, Central, and Pacific Flyways. That decision reflected public concerns that framework-date extensions could re-distribute hunting opportunities in unknown or undesirable ways; that there could be adverse biological impacts; and that the four Flyway Councils had not had sufficient opportunity to design an approach that could be supported by a majority of States. In recognition of these concerns, we expressed an interest in working with the International Association of Fish and Wildlife Agencies, the National Flyway Council, and the four Flyway Councils to explore common goals, potential conflicts, and possible solutions in the debate over framework-date extensions. However, we also recognized the inherent difficulty in finding a consensus solution, principally because the issue involves highly subjective assessments of what constitutes the fair and equitable distribution of hunting opportunity among States.

On September 29, 1998 (63 FR 51998), we published the final late-season frameworks for migratory bird hunting regulations that States used to select their hunting seasons. On October 19, 1998, Congress directed us to offer a framework-date extension from the Sunday nearest January 20 to January 31 in the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee, provided the affected States agreed to reduce season length to offset the predicted increase in duck harvest. No public comment was accepted on this action because: (1) the framework dates were revised based on a directive from Congress; (2) public comment could not change the Congressional action; (3) there was insufficient time before the onset of hunting seasons in southern States; and (4) we had already received extensive public comment on the issue. Ultimately, the States of Alabama, Mississippi, and Tennessee selected the framework-date extension, and the length of their hunting seasons was reduced from 60 to 51 days.

In evaluating proposals for framework dates for the 1999–2000 hunting season, we will continue to focus on several key issues, including: (1) the potential for biological impacts on the waterfowl resource, particularly on those species currently at depressed levels; (2) the technical difficulties associated with applying framework dates at a State, rather than Flyway, level; (3) the need to maintain framework dates as a viable tool, along with season length and bag limit, for regulating duck harvests; and (4) the acceptability of proposals to a broad range of stakeholders. In addition, we are particularly concerned about any modification to framework dates that would disrupt the functioning of Adaptive Harvest Management (AHM), which is intended to reduce long-standing uncertainties about the impacts of hunting regulations on waterfowl populations. An essential feature of the AHM process is a set of regulatory alternatives (including framework dates, season lengths, and bag limits) that is sufficiently stable over time to permit a reliable investigation of the relationships between regulations and harvest, and between harvest and subsequent duck population size.

Proposals for framework extensions also will be evaluated based on our most recent biological assessment, which was conducted in response to a directive contained in the Senate Committee on Appropriations Report 105–227. Our assessment confirmed that extensions of opening and closing framework dates tend to increase the harvest of many duck species. Therefore, large-scale extensions, which are not accompanied by reductions in season length and/or bag limits, likely would increase the frequency of restrictive hunting regulations and the frequency of annual regulatory changes. Moreover, the assessment confirms that additional uncertainty about harvest levels, arising from novel changes to regulatory alternatives, will precipitate more conservative harvest strategies, at least in the short term.

Last August, and again last November, we publicly endorsed the National Flyway Council's (NFC) overall review of the framework-dates issue. We commend the NFC for their continuing efforts to resolve this contentious issue and seek consensus among the Flyways. However, in reviewing the recent framework-date proposals from the four Flyway Councils, it is readily apparent that a consistent approach among or, in one case, within Flyways is still lacking. Apparently, there remains a diversity of opinions: (1) about the desirability of framework-date extensions at this time; (2) about the need for corresponding reductions in season length; (3) about whether extensions should be applied to opening dates, closing dates, or both; and (4) about the inclusion of framework-date extensions in some or all of the regulatory alternatives.

We hope the Flyway Councils will continue to seek agreement on clear, definitive statements about harvest-management objectives, which include not only the overall desired level of hunting opportunity, but how that opportunity should be shared among States. Otherwise, we believe that tacit disagreement over the objectives of modifying framework dates will continue to undermine the biological and administrative foundations of the regulatory process. Therefore, we strongly believe that the debate over framework-date extensions could benefit from a more structured dialogue, in which Flyway Councils explore the sociological issues of fairness and equity underlying the framework-date issue. We acknowledge the difficulties associated with such a dialogue, but broad-based agreement on a regulatory approach to framework dates is unlikely in its absence.

In the absence of consensus among the Flyways and with a recognition of the need for stable regulatory alternatives for AHM, for the 1999–2000 hunting season, we are proposing the continued use of the 1998–99 regulatory alternatives published in the August 5, 1998, **Federal Register**, with one exception. For the States of Alabama, Mississippi, and Tennessee, we propose a 51-day season with a January 31 framework closing date in the ''liberal'' alternative. Of the six States that were offered the framework extension in the 1998–99 season, only these three States availed themselves of this option. We believe that a reduction in season length is needed to offset the expected increase in duck harvest (about 18% for mallards), and that 9 days is a commensurate offset for this region of the country. The framework-date extension would be limited to the ''liberal'' regulatory alternative to avoid the introduction of additional uncertainty about harvest impacts at other regulatory levels, and to avoid the potential for late-season physiological or behavioral impacts on ducks when population levels are insufficient to support liberal seasons. Framework opening and closing dates for all other States would remain unchanged from those published in the August 5, 1998, **Federal Register**. Finally, we intend to maintain these framework-date specifications through the 2002–03 hunting season. This stability is necessary to assess the appropriateness of the 9-day offset for the extended framework closing date in the southern Mississippi Flyway, and to ensure that the AHM process can continue to increase our understanding of the effects of hunting on waterfowl populations. This understanding is essential to providing maximum levels of biologically sustainable hunting opportunity.

F. Zones and Split Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service add ''3 zones with 2-way splits permitted in one or more zones'' as an additional option beginning in 2001. Further, because of the public input process many States undertake, the Committee recommended that States have up to one year to choose this option and provide the Service with its proposal (prior to the 2001 regular duck season regulations process).

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service consider offering all States the option of choosing 3 zones with a split season in each zone in the year 2001.

The Pacific Flyway Council recommended the Service engage the Flyway Councils in an evaluation of the guidelines for zoning and split seasons, prior to the 2001 ''open season'' on regulation changes.

G. Special Seasons/Species Management

i. Scaup

We indicated our growing concern for the status and trends of North American scaup in September of last year (63 FR 51998) and May of this year (64 FR 23742). Additionally, scaup population status was a topic of discussion at the January 27, 1999, Service Regulations Committee meeting. We have also distributed a status report on scaup and provided some initial guidelines concerning a scaup harvest strategy to the Flyway Councils and others for consideration in the development of recommendations for the 1999–2000 hunting season. In response to this information, all four Flyways discussed the issue at their winter meetings.

Council Recommendations: The Atlantic Flyway Council recommended that the Service monitor and manage the harvest of greater and lesser scaup populations separately. They recommended that differences in harvest management, when required, be achieved through different daily bag limits applied on a regional basis. In the Atlantic Flyway, they recommended that in those regions harvesting primarily greater scaup, 1999–2000 scaup harvest regulations be based on the status of greater scaup, while the remaining portions of the Flyway be based on the status of lesser scaup. They further recommended that population objectives and regulatory triggering levels be finalized at the summer Flyway Council meetings.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the scaup daily bag limit be reduced from 6 to 3 for 1999.

The Central Flyway Council believes that the North American Waterfowl Management Plan's scaup population objective (6.3 million) is too high and that a more appropriate objective is 5.4 million (1955–1998 average). This new objective would consist of 4.9 million lesser scaup and 462,000 greater scaup. The Council recommended a prescription for scaup bag limits based on the status of lesser scaup as follows: < 2 million, bag limit of 1; 2–4.2 million, bag limit of 2; and > 4.2, the bag limit for scaup should equal the regular

daily duck limit as determined by the AHM process.

Service Response: We remain concerned about the long-term status and trends in North American scaup populations. Further, we appreciate the efforts of all four Flyway Councils to constructively address the issue of a harvest strategy for scaup and will continue to work with the Councils to finalize a harvest strategy for scaup for the 1999–2000 season.

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service clarify the linkage between the Flyway-wide wood duck harvest strategy, September teal seasons, and regional (reference area) September wood duck seasons. They further recommended the continuation of the experimental September teal/wood duck seasons in Kentucky and Tennessee in 1999 with no changes from the 1998 season.

v. Youth Hunt

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a special 2-day youth waterfowl season.

The Central Flyway Council recommended expansion of the special youth waterfowl hunt to 2 consecutive days.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council made several recommendations concerning September goose seasons. They recommended the approval of operational status for a September 1 to 25 framework in Crawford County, Pennsylvania, and a September 1 to 30 framework in New Jersey beginning in 1999. They further recommended the expansion of the September goose season framework closing date around Montezuma National Wildlife Refuge, New York from September 15 to 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Minnesota be allowed to have an experimental extension of their September special season from September 16 to 22, except in the Northwest Goose Zone, for the 1999, 2000, and 2001 hunting seasons.

The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Pacific Flyway Council recommended the addition of the Bridger Valley hunt unit to the existing September RMP Canada goose seasons in western Wyoming, with frameworks of September 1 to 7.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular goose season opening date be as early as September 18 in Michigan and Wisconsin.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Atlantic Flyway Council requested that the Service begin preparation of the NEPA documentation necessary for regulation changes needed to stabilize the greater snow goose population at 1.0 million by 2002. Their recommended changes include extension of the shooting hours to one-half hour after sunset, the use of electronic callers, unplugged shotguns, and conservation hunts. They requested initiation of these changes by the 1999–2000 season.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended removal of the ''float'' portion (10 percent of the total allowable harvest) of the Rocky Mountain Population (RMP) greater sandhill crane annual harvest allocation for the 1999–2000 and 2000–2001 seasons. The Council recommended removal of this harvest portion to allow a research study.

The Pacific Flyway Council recommended several changes in sandhill crane seasons. For greater sandhill cranes, the Council recommended the establishment of a new experimental crane hunt in Box Elder County, Utah, between September 1 and September 30. For RMP cranes, the Council recommended that the frameworks be modified to include Bear Lake and Fremont Counties in Idaho, and that the current requirement for hunter check stations in these counties be waived. The Council further recommended that the annual check station requirement for the Arizona RMP Greater Sandhill Crane hunt be modified to a required check station every 3 years.

18. Alaska

Council Recommendations: The Pacific Flyway Council made several recommendations concerning Alaska. For sea ducks, the Council recommended reducing the separate sea duck bag and possession limits from 15/30 to 10/20 king and common eiders, scoters, and mergansers in the aggregate. Long-tailed ducks (oldsquaws) and harlequins would be included in general duck limits and seasons would remain closed for spectacled and Steller's eiders. For Canada geese, the Council recommended removal of Canada goose bag limit restrictions within dark goose bag limits (4/8) in Alaska Game Management Subunit 9E (Alaska Peninsula) and Unit 18 (Y-K Delta). Further, for tundra swans, the Council recommended that tundra swan permits issued for swan hunts in Alaska allow the take of up to 3 swans per permit, with no change in reporting requirements or other framework conditions.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests, and therefore desire to obtain the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the

address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 1999–2000 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1) .

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion its constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are

developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: June 9, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310–55–P

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 1999-2000 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY (a)				CENTRAL FLYWAY (b)				PACIFIC FLYWAY (c)(d)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Begining Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20
Season Length	20	30	45	60	20	30	45	60	25	39	60	74	38	60	86	107
Daily Bag/ Possession	3 / 6	3 / 6	6 / 12	6 / 12	3 / 6	3 / 6	6 / 12	6 / 12	3 / 6	3 / 6	6 / 12	6 / 12	4 / 8	4 / 8	7 / 14	7 / 14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	3/1	3/1	5/1	5/2	3/1	3/1	5/2	7/2
Pintail	<-- ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY -->															
Black Duck	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-
H. Merganser	1	1	1	1	1	1	1	1	1	1	1	1	-	-	-	-
Scaup	<-- ACCORDING TO THE SCAUP INTERIM HARVEST STRATEGY -->															
Canvasback	<-- 0 OR 1, ACCORDING TO THE SERVICE'S INTERIM CANVASBACK HARVEST MANAGEMENT STRATEGY -->															
Redhead	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	3	1	1	1	1	-	-	-	-

(a) In the States of Alabama, Mississippi, and Tennessee, the season length in the liberal alternative is 51 days and the framework closing date is January 31.
(b) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various options as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all options, additional days must be on or after the Saturday nearest December 10.
(c) In the Columbia Basin Mallard Mangement Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all options except the liberal option, an additional 7 days would be allowed.
(d) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive options, and 8-10 under the moderate and liberal options. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all options, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

[FR Doc. 99–15337 Filed 6–16–99; 8:45 am]
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Federal Register

Thursday
June 17, 1999

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 21

Migratory Bird Special Canada Goose Permit; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AE46

Migratory Bird Special Canada Goose Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The United States Fish and Wildlife Service (Service) establishes, in cooperation with State wildlife agencies, a Canada goose damage management program. This program is designed to provide a biologically sound and more cost-effective and efficient method for the control of locally-breeding Canada geese that pose a threat to health and human safety and damage personal and public property.

DATES: The rule becomes effective June 17, 1999.

ADDRESSES: You may request copies of the EA and comments received on the proposed rule by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street NW., Washington, D.C. 20240. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Numbers of Canada geese that nest and reside predominantly within the conterminous United States have increased exponentially in recent years (Rusch *et al.,* 1995; Ankney, 1996). These increasing populations of locally-breeding geese are resulting in increasing numbers of conflicts with human activities and property, and concerns related to human health and safety are increasing (Ankney, 1996). To date, the U.S. Fish and Wildlife Service (We) has attempted to address this growing problem through existing annual hunting season frameworks and the issuance of control permits on a case-by-case basis. While this approach has provided relief in some areas, we realize that sport harvest will not completely address the problem and that the current permit-issuance system is a time-consuming and burdensome process for both applicants and us. Therefore, we are changing the way we issue permits under the Migratory Bird Treaty Act for control and management of resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property.

Which Canada Geese Are Affected by This Rule?

The geographic scope of this rule is restricted to the conterminous United States and to Canada geese (Branta canadensis) that nest and/or reside predominately within the conterminous United States. Primarily, these geese consist mainly of *B. c. maxima* and *B.c. moffitti,* the ''giant'' and ''western'' Canada goose, respectively. Nesting geese within the conterminous United States are usually considered members of these two subspecies or hybrids between the various subspecies originating in captivity and introduced into numerous areas throughout the conterminous United States. No evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. For the purposes of this rule, we will collectively refer to all Canada geese nesting in the conterminous United States and/or Canada geese residing within the conterminous United States in the months of June, July, and August as ''resident'' Canada geese.

For the most part, the remaining subspecies of Canada geese recognized in North America nest in arctic and sub-arctic regions of Canada and Alaska (Lack 1974). These subspecies are usually encountered in the conterminous United States only during the fall, winter and spring of the year, or as a result of human placement.

How Does This New Program Avoid Conflicts With the Management of Other Migratory Canada Goose Populations?

Generally, we have stressed the need to manage all geese on a population basis, guided by cooperatively-developed management plans. However, resident Canada goose populations and the development of a resident Canada goose damage management program presented several potential problems with this approach. Because resident goose populations interact and overlap with other Canada goose populations during the fall and winter, any management action or program targeted at resident Canada geese during the fall and winter could potentially affect these other goose populations. Therefore, to avoid potential conflicts with existing management plans for other goose populations, this new program is further restricted to March 11 through August 31 of each year. These dates encompass the period when sport hunting is prohibited throughout the conterminous United States by the Migratory Bird Treaty (1916) and resulting regulations promulgated under the Migratory Bird Treaty Act (1918). Any injury and damage complaints occurring during September 1 to March 10, the period open to sport hunting, will continue to be addressed through either migratory bird hunting regulations or the existing migratory bird permit process.

What Authority Does the Service Have To Establish This New Program?

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are authorized by the Migratory Bird Treaty Act and are promulgated in 50 CFR parts 13 and 21.

How Are These Resident Canada Geese Different Than Other Canada Geese Populations? Other Than Location, Do They Behave Differently or Have Different Biological Characteristics?

Canada geese, like other geese, are long-lived birds with relatively low reproduction rates and high survival rates. However, of all the Canada goose subspecies, the subspecies comprising most resident geese have higher reproductive and adult survival rates. Resident geese live in more temperate climates with relatively stable breeding habitat conditions and low numbers of predators. Arctic and subarctic Canada goose survival and reproduction are greatly influenced by weather conditions. Additionally, nesting resident geese are very tolerant of human disturbance and willing to nest in close proximity to other geese (Gosser and Conover, 1999; Zenner and LaGrange, 1998). Urban and suburban landscaping in the conterminous United States also offers resident geese a relative abundance of their preferred habitat (park-like open areas with short grass adjacent to small bodies of water). Also, resident geese fly relatively short distances to winter compared with other Canada goose populations. All of these factors result in consistently high annual reproduction and survival for the resident Canada goose population.

What Is the Current Status of These Resident Populations?

In recent years, the numbers of Canada geese that nest predominantly within the conterminous United States have increased tremendously. Recent

surveys in the Atlantic, Mississippi, and Central Flyways (Wood *et al.*, 1994; Kelley *et al.*, 1998; Nelson and Oetting, 1998; Sheaffer and Malecki, 1998) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic and Mississippi Flyways and is increasing exponentially.

Information from the 1998 Waterfowl Status Report (Kelley *et al.*, 1998) shows that in the Atlantic Flyway, the resident population has increased an average of 14 percent per year since 1989. Last spring, the population estimate was 970,055 geese in the northeastern U.S., a number which is, however, similar to 1997. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years. The 1998 spring population estimate was 1,167,085 geese, an increase of 21 percent from 1997. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. In some areas, numbers of resident Canada geese have increased to record high levels. We remain concerned about the rapid growth rate exhibited by these already large populations, especially in parts of the Atlantic and Mississippi Flyways.

What Interests Are Being Injured by These Large Populations (i.e., What Are Some of the Problems and Conflicts)?

Urban and suburban resident Canada goose populations are increasingly coming into conflict with human activities in many parts of the country, especially at public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals and residential subdivisions, and along or between highways. In parks and other open areas near water, large goose flocks create a nuisance with their abundant droppings and feather litter (Conover and Chasko, 1985). Surveys have found that while most landowners like seeing some geese on their property, eventually, increasing numbers of geese and the associated accumulation of goose droppings on lawns cause many landowners to view geese as a nuisance and thus reduce the aesthetic value and recreational use of these areas (Conover and Chasko, 1985). Additionally, goose droppings in heavy concentrations can overfertilize lawns and degrade water quality resulting in eutrophication of lakes with excessive algae growth (Manny *et al.*, 1994). Overall, complaints related to personal and public property damage, agricultural damage and other public conflicts are increasing as resident Canada goose populations increase.

How Has the Service Dealt With These Problems in the Past?

To date, we have tried to address injurious resident Canada goose problems through existing hunting seasons, the creation of new special Canada goose seasons designed to target resident populations, and issuance of permits allowing specific control activities.

Have Special Hunting Seasons Been Adequate To Solve the Problems?

Special Canada goose seasons are hunting seasons specifically designed to target resident populations through either time or area restrictions. We first initiated special seasons targeting resident Canada geese in 1977 in the Mississippi Flyway with an experimental late season in Michigan. Following this and other early experiments in Michigan and several other Midwestern States, we gave notice of pending criteria for special Canada goose seasons in the June 6, 1986, **Federal Register** (51 FR 20681). We finalized criteria for special early seasons in the August 9, 1988, **Federal Register** (53 FR 29905) and later expanded them to include special late seasons in the September 26, 1991, **Federal Register** (56 FR 49111). The original intent of these special seasons was to provide additional harvest opportunities on resident Canada geese while minimizing impacts to migrant geese. The criteria were necessary to control harvests of non-target populations and required States to conduct annual evaluations. Initially, we considered all such seasons experimental, pending a thorough review of the data gathered by the participating State. Early seasons are generally held during early September, with late seasons occurring only after the regular season, but no later than February 15.

We presently offer special seasons for resident Canada geese in all four Flyways, with 31 States participating. They are most popular among States when regular Canada goose seasons are restricted to protect migrant populations of Canada geese. Currently, restrictive harvest regimes are in place for the Atlantic, Southern James Bay, Dusky, Cackling and Aleutian Canada goose populations.

Harvest of Canada geese during these special seasons has increased substantially over the last 10 years. In the Atlantic Flyway, 16 of 17 States hold special Canada goose seasons, with harvest rising from about 2,300 in 1988 to almost 124,000 in 1995 (MBMO, 1997). In the Mississippi Flyway, 10 of 14 States hold special Canada goose seasons, and harvest has increased from less than 10,000 birds in 1986 to almost 150,000 in 1995. Michigan currently harvests in excess of 50,000 locally-breeding Canada geese per year. While the opportunities are not as significant in the Central and Pacific Flyways, as areas and seasons have expanded, harvest has increased from approximately 1,300 in 1989 to over 20,000 in 1995.

Creation of these special harvest opportunities has helped to limit the problems and conflicts between geese and people in some areas. However, many resident Canada geese remain in urban and suburban areas throughout the fall and winter where these areas afford them almost complete protection from sport harvest. Thus, while the creation of these special hunting seasons is our first and preferred alternative for dealing with most conflicts, we realize that harvest management will never completely address this growing problem and permits to conduct otherwise prohibited control activities will continue to be necessary to balance human needs with expanding resident Canada goose populations.

Have Control Measures Under the Existing Permit System Been Adequate?

Complex Federal and State responsibilities are involved with all migratory bird control activities, including the control of resident Canada geese. All State and private control activities, except techniques intended to either scare geese out of or preclude them from a specific area, such as harassment, habitat management, or repellents, require us to issue a Federal permit. Additionally, we issue permits to alleviate migratory bird depredations in coordination with the Wildlife Services program of the Animal and Plant Health Inspection Service (APHIS/WS). APHIS/WS is the Federal Agency with lead responsibility for dealing with wildlife damage complaints. In most instances, State permits are required as well.

However, APHIS/WS has limited personnel and resources to respond to requests for assistance. Likewise, as the number of complaints and conflicts continue to increase, the public will place greater demand on us and the States to assist in goose damage-management programs. This increased need for assistance places greater demand on the current permit-issuance system. Unfortunately, administrative

procedures involved in the issuance of permits many times cause a lag time of several weeks between our receipt of a permit request, our evaluation and decision on issuing the permit, and the ultimate issuance of a site-specific permit authorizing a control action. In the interim, even small numbers of geese can cause significant damage to personal property and result in economic, recreational, and aesthetic losses. Thus, with the increase in complaints, the current permit issuance system has become time-consuming, cumbersome and inefficient for us and the States.

How Have the Number of Complaints and Requests for Assistance and Permits Increased?

A brief summary of the complaints/requests for control permits placed with APHIS/WS indicates the increasing number of public conflicts. In 1997, APHIS/WS received 3,295 complaints of injurious Canada goose activity (APHIS/WS, 1997). In response to those complaints, APHIS/WS recommended we issue 354 permits. The vast majority of these complaints concerned agricultural, human health and safety, and property issues and came primarily from the Northeastern/New England area (50%) and the Upper Midwest/Great Lakes area (29%). In 1996 and 1995, APHIS/WS received 3,265 and 2,884 complaints, respectively, of injurious goose activity (APHIS/WS, 1996; APHIS/WS, 1995). In response to those complaints, APHIS/WS recommended we issue 321 permits in 1996 and 250 permits in 1995.

Comparing these figures with previous years' data shows a steady increase in complaints since 1991. For example, in 1993 and 1991 APHIS/WS received 2,802 and 1,698 complaints, respectively, of injurious Canada goose activity (APHIS/WS, 1993; APHIS/WS, 1991). In response to those complaints, APHIS/WS recommended we issue 192 and 92 permits, respectively.

Has the Number of Permits Issued Increased Correspondingly?

Yes. Our permit issuance has also increased tremendously in recent years. For example, Region 5 (the Northeastern/New England area) issued 26 site-specific permits to kill resident Canada geese and 54 permits to addle eggs in 1994. Two years later in 1996, Region 5 issued 70 site-specific permits to kill resident Canada geese, 1 permit to relocate geese, and 151 permits to addle eggs. In addition, the Region issued Statewide permits to relocate birds and addle eggs to agencies in certain States. Over 3 years, these permits resulted in the relocation of over 2,600 geese, the addling of eggs in over 2,300 nests, and the take of over 1,000 birds.

In Region 3, the Upper Midwest/Great Lakes area, the number and extent of permits issued to manage and control resident Canada geese has also increased significantly in the past few years. In 1994, the Region issued 149 permits authorizing resident Canada goose control activities, including trapping and relocation, destruction of nests/eggs, and take of adults. In 1998, Region 3 issued 225 permits authorizing resident Canada goose control activities. In total, permit holders, including APHIS/WS, airports, and state wildlife agencies, reported taking in excess of 27,000 eggs and 6,800 geese, and trapped and relocated over 70,000 resident Canada geese (complete reports through 1997, partial reports for 1998). States in which control activities were conducted included Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Since 1995, Region 3 has also issued permits to the Michigan Department of Natural Resources and the Minnesota Department of Natural Resources authorizing the capture and processing of resident Canada geese as food for local food-shelf programs. Minnesota's permit was a part of the their Urban Goose Management Program for the Minneapolis-St. Paul Metropolitan Area (initiated in 1982). In 1995, the first year under these permits, Michigan and Minnesota were authorized to take up to 2,000 and 325 geese, respectively. Michigan reported taking 24 birds with Minnesota taking its full allotment of 325 birds. Since then, Minnesota has been authorized to annually take up to 2,500 resident Canada geese for its food-shelf program. In the three years under the program since 1995, Minnesota has reported taking 5,399 birds. Likewise, Michigan was also issued permits for 1996–1998 authorizing the take up to 1,000 resident Canada geese for its food-shelf programs. Michigan subsequently reported taking 490 birds in 1996 and 952 birds in 1997. Michigan vacated their 1998 permit.

In Region 1, the Pacific Northwest/West Coast area, we have primarily limited permits for the control of resident Canada geese to the addling of eggs. In 1995, the Region issued permits authorizing the take of 900 eggs in the Puget Sound Area of Washington. In 1996, this number was increased to 2,000 eggs and 200 adult birds. APHIS/WS subsequently reported taking 911 and 1,570 eggs in 1995 and 1996, respectively, and 6 geese in 1996. For 1997, the Region authorized the take of 2,000 eggs in the Puget Sound Area and another 500 eggs in the City of Fremont, California.

What Exactly Are the New Permits Authorized By This Rule and How Will They Work?

We, with our State and other Federal partners, believe development of an alternative method of issuing permits to control problem resident Canada geese, beyond those presently employed, is needed so that agencies can provide responsible, cost-effective, and efficient assistance. The special Canada goose permit authorized by this rule provide the States that opportunity while maintaining protection of our migratory bird resources. The new special Canada goose permits will allow States and their designated agents to conduct management activities as soon as it becomes apparent that resident Canada geese are a problem. The new permits would also rely on a greater application of community standards and preferences by allowing judgments determining appropriate levels of control to be made at a more local level.

The new permits are specifically for the management and control of resident Canada geese (as defined in the rule). We will issue permits to State conservation or wildlife management agencies on a State-specific basis, so States and their designated agents can initiate resident goose damage management and control injury problems within the conditions/restrictions of the permit program. The permits will be restricted to the period between March 11 and August 31. This new special permit will increase the use and availability of control measures, decrease the number of injurious resident Canada geese in localized areas, have little impact on hunting or other recreation dependent on the availability of resident Canada geese, and allow injury/damage problems to be dealt with on the State/local level, thereby resulting in more responsive and timely control activities. The new special permits will further result in biologically sound and more cost-effective and efficient resident Canada goose damage management. Those States not wishing to obtain these new permits would continue to operate under the current permitting process.

What Do States Need To Do To Apply for the New Permits?

Applications for the new special permit would require several items from the State:

1. A detailed statement estimating the size of the resident Canada goose breeding population in the State;

2. A request for the number of resident Canada geese, including eggs and nests, to be taken;

3. A statement showing that such damage-control actions will either provide for human health and safety or protect personal property, or compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese; and

4. A statement indicating that the State will inform all designated agents of the permit conditions applying to the implementation of resident Canada goose damage management activities.

What Are the Conditions and Restrictions of the New Permit Program?

The special resident Canada goose damage-management permits are subject to the following conditions and restrictions:

1. State wildlife agencies (States) may take injurious resident Canada geese as a management tool. States should utilize non-lethal management tools to the extent they consider appropriate in an effort to minimize lethal take.

2. Control activities should not adversely affect other migratory birds or any species designated under the Endangered Species Act as threatened or endangered.

3. States may conduct control activities March 11 through August 31. States should make a concerted effort to limit the take of adult birds to June, July, and August in order to minimize the potential impact on other migrant populations. In areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years in California, Oregon and Washington, lethal control activities are restricted to May 1 through August 31. If this subspecies is delisted, we will review this provision.

4. States must conduct control activities clearly as such (e.g., they cannot be set up to provide a hunting opportunity).

5. States cannot use the permits to limit or initiate management actions on Federal land without concurrence of the Federal Agency with jurisdiction.

6. States must properly dispose of or utilize Canada geese killed in control programs. States may donate Canada geese killed under these permits to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, or charities for human consumption. States may also bury or incinerate geese. States may not allow for Canada geese taken under these permits, nor their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

7. States may use their own discretion for methods of take but utilized methods should be consistent with accepted wildlife-damage management programs.

8. States may designate agents who must operate under the conditions of the State's permit.

9. Any employee/designated agent authorized by the State to carry out control measures under a special permit must have in their possession a copy of the State's permit, and designation, in the case of an agent, while carrying out any control activity.

10. States must keep records of all activities, including those of designated agents, carried out under the special permits. We will require an annual report detailing activities conducted under a permit.

11. We will annually review States' reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of this resource.

12. States should not construe anything in the permits to authorize the killing of Canada geese contrary to any State law or regulation or on any Federal land without written authorization by the appropriate management authority. Further, States are not authorized to conduct control activities authorized by the permits without any required State permit.

13. We reserve the authority to immediately suspend or revoke any permit if we find that the State has not adhered to the terms and conditions specified in 50 CFR 13.27 and 13.28 or if we determine that the State's population of resident Canada geese no longer poses a threat to human health or safety, to personal property, or of injury to other interests.

How Will This New Permit Actually Affect "On-the-Ground" Resident Canada Goose Control and Management Activities? Will We See a Dramatic Increase In The Use of Control Activities?

Under the new permits, we expect that the use of resident Canada goose control and management activities, particularly lethal control methods such as egg and nest destruction, will increase. We also expect an initial increase in the lethal control methods associated with hazing techniques of adult birds. However, following this initial increase in control activities, we expect the hazing methods to become more effective and probably result in fewer overall lethal control activities.

Won't This Large-Scale Increased Use of Control Activities Result in Harm to the Population?

No. We expect these lethal and non-lethal activities to decrease the number of injurious resident Canada geese in localized areas, especially urban and suburban areas. Regionally, we expect little overall impact on the resident Canada goose population because many goose populations have demonstrated the ability to sustain harvest rates in excess of 20 percent. We anticipate the magnitude of any lethal control activities will be well below 20 percent of any State's resident Canada goose breeding population.

Will These New Permits Impact Existing Sport Hunting Opportunities?

We expect little impact on sport hunting under the new special permits. Resident Canada goose populations in areas targeted for management/control activities are generally those that provide little or no sport hunting opportunities due to restricted access within urban and suburban areas. As such, hunting in these areas is either precluded or severely restricted. We would expect areas and resident Canada goose populations already open to sport hunting to remain open, as special Canada goose season frameworks and guidelines would not change.

What Are Some of the Other Benefits of These New Permits?

By allowing States and local jurisdictions to deal with injurious resident Canada goose problems, instead of having the Service do so at a regional level, we expect control activities will be more responsive and timely to the problem(s) than is currently the case. Consequently, we expect that with reduced injurious populations and more effective hazing programs, fewer complaints are likely to occur and less resident Canada goose damage is likely.

With State fish and wildlife agencies responding to individual resident Canada goose problems within their respective jurisdictions, our administrative responsibilities for each individual control activity that currently necessitate the determination or issuance of a permit is expected to decrease significantly. Currently, in most instances, we must decide on a case-by-case basis whether a permit should be issued. This new permit would greatly lessen the number of these permits and the associated administrative procedures.

Public Comment

On September 3, 1996, we issued in the **Federal Register** (61 FR 46431) a

notice of availability of a Draft Environmental Assessment (DEA) on Permits for Control of Injurious Canada Geese and Request for Comments on Potential Regulations. The notice advised the public that we had prepared a DEA. The notice also announced our intent to consider regulatory changes to the process for issuance of permits to control injurious resident Canada geese. We subsequently extended the public comment period on November 12, 1996 (61 FR 58084).

As a result of this invitation for public comment, we received 101 comments including two from Federal agencies, 28 from State wildlife agencies, 24 from private organizations and 47 from private citizens. After consideration of the comments, we revised our DEA.

On March 31, 1998, we published in the **Federal Register** (63 FR 15698) a proposal to establish a Canada goose damage management program (i.e., Special Canada Goose Permit). In response to our proposed rule, we received 465 comments from Federal, State and local agencies, non-governmental organizations, and individuals. In addition, we received several petitions containing 1,674 signatures. We summarize the issues and provide our responses below. We also believe it is important to note that some of the comments we received on the proposed rule were very similar to comments received on the DEA. While we previously responded to these issues in our March 31, 1998 proposed rule, we respond here again as a convenience to the reader.

Issue: Many private individuals and several private organizations commented that our Environmental Assessment was insufficient to comply with NEPA requirements, and that we should prepare a full Environmental Impact Statement before taking any action on the program.

Service Response: We conducted an Environmental Assessment of alternative regulatory strategies to control and manage resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property. We considered four alternatives to the way permits for control and management of injurious resident Canada geese are issued:

Alternative 1. Continue current permitting procedures as described in 50 CFR part 21. This would be the No Action Alternative.

Alternative 2. Add a new permit option specifically for the management of injurious resident Canada geese. The permits would be available to State conservation or wildlife management agencies on a State-specific basis. Under the permits, States and their designated agents could initiate resident goose damage management and control injury problems within the conditions/restrictions of the program. Such permits would be restricted to the period between March 11 and August 31.

Alternative 3. Issue a depredation order allowing State conservation agencies to control resident Canada goose damage. The depredation order would allow States to control injury from resident Canada geese within the conditions/restrictions of the depredation order. Such a depredation order would be restricted to the period between March 11 and August 31.

Alternative 4. More restrictive use of permits to control resident Canada goose damage, limited to situations where geese pose a direct threat to human life or safety.

We selected Alternative 2, the addition of a new permit option specifically for resident Canada goose control and management available to State conservation agencies on a State-specific basis. This alternative would increase the use and availability of control measures, decrease the number of injurious resident Canada geese in localized areas, have little impact on hunting or other recreation dependent on the availability of resident Canada geese, and allow injury and damage problems to be dealt with on the State or local level, thereby resulting in more responsive and timely control activities. This alternative would further result in biologically sound and more cost-effective and efficient resident Canada goose damage management.

Based on review and evaluation of comments by the public and information contained in the EA, we determined that the action to amend 50 CFR Part 21 to establish a special Canada goose permit program for the control and management of resident Canada geese would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, we made a Finding of No Significant Impact on this action and determined that preparation of an Environmental Impact Statement was not required. This determination was based on consideration of the following factors which were addressed in the Finding of No Significant Impact and provided below:

1. While the program is State-wide in application, resident Canada goose damage management activities conducted under the program will likely occur in localized areas only. The control activities resulting from this program would likely occur under individual special permits issued under the current permit regulations contained in 50 CFR part 21.

2. On balance, the impact of the new program will be beneficial in that reducing the number and frequency of injury to human interests will be beneficial to the human environment. However, because of the limited numbers of geese likely to be taken under the program, the benefits will not be significant. Likewise, due to the large and expanding population of resident Canada geese, adverse impacts (taking of individual geese) will not be significant in the context of the human environment.

3. The activities conducted under the program will not significantly affect public health and safety. While we believe that any impacts to public health and safety will be beneficial, impacts will not be significantly beneficial. The program will likely have a beneficial impact on human health and safety through a reduction in the likelihood of bird aircraft strikes, conflicts with people and property, and potential concerns over the transmission of disease to humans.

4. Although there is controversy over the program, it primarily has to do with objections by some groups opposed to any take of Canada geese rather than over the analysis or scientific basis for determining the impacts of our action. While some of these groups are opposed to all goose or other wildlife damage management activities and dispute the actual context of damage, the methods and impacts are generally not controversial among wildlife managers and wildlife damage management experts, nor the general public. All relevant concerns have been addressed in the Environmental Consequences chapter in the Environmental Assessment.

5. The possible effects of the program on the quality of the human environment are not highly uncertain and do not involve unique or unknown risks. The effects and potential risks were determined in the process of development of the Environmental Assessment.

6. The program does not establish a precedent for actions with future significant effects or represent a decision in principle about a future consideration. We have issued similar permits for goose control activities on a case-by-case or State-wide basis and States are currently conducting Canada goose damage management activities

under these permits. Likewise, we have issued similar regulations, in the form of depredation orders, for other species, such as the double-crested cormorant, blackbirds, cowbirds, grackles, crows, and magpies. Any future similar actions, either for Canada geese, or any other migratory bird species, would be analyzed under NEPA, with public involvement, on their own merits.

7. There are no significant cumulative effects identified by this assessment. Under this program, we expect that the use of resident Canada goose control and management activities, particularly lethal control methods such as egg and nest destruction, would increase. Lethal control methods associated with hazing techniques of adult birds would also be expected to initially increase. However, following this initial increase, continual use of hazing methods should become more effective and may result in fewer overall lethal control activities. Such lethal and nonlethal activities would be expected to decrease the number of injurious resident Canada geese in specific localized areas, especially urban and suburban areas. Regionally and nationally, we expect little overall population impact because many Canada goose populations have demonstrated the ability to sustain harvest rates in excess of 20 percent. We anticipate that the magnitude of any lethal control activities will be well below 20 percent of any State's resident Canada goose breeding population. As discussed in the Environmental Assessment, we expect the program to slow the overall population growth rate and address specific localized injurious population, but not significantly impact the overall population.

8. The program will fully comply with the Endangered Species Act of 1973, as amended. The Service determined that the program is not likely to adversely affect the Aleutian Canada goose, a Federally listed threatened species.

9. The program will not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The EA and Finding of No Significant Impact are available to the public at the location indicated under the **ADDRESSES** caption.

Issue: Some commenters expressed concern that we did not have the authority under the Migratory Bird Treaty Act (MBTA) and subsequent regulations to allow non-Service entities (i.e., States) to issue permits. Many saw this as an attempt to abrogate our goose-management responsibility.

Service Response: As we indicated in the proposed rule, we will utilize a process whereby permits are only issued to State conservation or wildlife management agencies responsible for migratory bird management. State conservation agency employees or their designated agents could then carry out resident Canada goose damage management and control injurious problems within the conditions/restrictions of the permit program. This process is essentially no different than the current permitting process contained in 50 CFR part 21.

Issue: A large number of comments challenged the notion that there are in fact ''injurious'' Canada geese and that the entire concept and definition of ''resident'' Canada geese is invalid. Some commenters saw the new permit program as a mechanism to remove Canada geese from the protection afforded them under the Migratory Bird Treaty (Treaty).

Service Response: We strongly disagree with these assertions and have included data in the EA that demonstrate the impact of resident Canada goose populations on personal property, agricultural commodities, and health and human safety. In addition, data is presented that clearly points out that Canada goose populations do nest in parts of the conterminous United States during the spring and summer and that these birds are increasingly causing injury to people and property. Furthermore, we are not redefining what is or is not a migratory bird under the Treaty. Canada geese are clearly protected by the Treaty and will continue to be. We are using the term ''resident'' to identify those commonly injurious Canada geese that will be the subject of permitted control activities within the scope of the Treaty. Additionally, in response to comments, we have clarified the definition of ''resident geese'' to read: Resident Canada geese means Canada geese that nest within the conterminous United States and/or Canada geese which reside within the conterminous United States during the months of June, July, or August.

Issue: Several commenters believed the Treaty only authorizes the killing of migratory birds if they are seriously injurious to commercial interests, not personal property.

Service Response: Article VII of the Treaty states, ''Permits to kill any of the above named birds, which under extraordinary conditions may become seriously injurious to the agricultural or other interests in any particular community (emphasis added), may be issued by the proper authorities * * *''. We believe that resident Canada goose populations have reached this level. The information available to us as discussed in the **SUPPLEMENTARY INFORMATION**, and in the Environmental Assessment accompanying this action, demonstrates that the current population levels are causing serious injury to increasing numbers of people and property. The Treaty does not limit the ''interests'' to be protected to those that are commercial. Rather, it provides the High Contracting Parties broad authority to address any affected interests. Therefore, we believe that establishment and implementation of this permit program is in accordance with the terms of the Treaty.

Issue: Some commenters questioned the actual risks posed by Canada geese on human health and safety.

Service Response: Although the human health and safety risks associated with resident Canada geese are difficult to quantify, we believe that the available data clearly indicate the potential negative impacts on health and safety issues (APHIS/WS, 1999). While we agree that the risk to human health from pathogens originating from geese is currently believed to be low, we are only beginning to understand these risks. Additional research is needed to assist in the quantification and understanding of these processes. Further, it is clear from bird-aircraft strike data that resident Canada geese can cause significant aircraft safety concerns. We believe that increasingly large populations of geese, especially in localized areas, only serve to increase the uncertainty associated with these risks.

Issue: A large number of commenters questioned the validity of resident Canada goose damage estimates supplied by APHIS/WS.

Service Response: According to APHIS/WS (1999), each damage report received is questioned for both scope and magnitude in order to determine reasonable and practical solutions to reduce damage. Preference is given to non-lethal alternatives. However, if capture and euthanasia are ultimately requested or recommended, APHIS/WS makes a site visit to verify damage and ensure some non-lethal methods have been tried and were ineffective to adequately reduce the damage. We believe APHIS/WS's approach is appropriate.

Issue: Several commenters believed the permit process does not allow adequate Federal oversight.

Service Response: We disagree. State applications for the special permits require several detailed statements regarding the size of the resident Canada goose breeding population in the State and the number of resident Canada geese, including eggs and nests, to be

taken. In addition, the State must show that such damage-control actions will either provide for human health and safety or protect personal property, or compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese. Any failure to follow these application procedures results in a rejected application. Further, after issuance of a permit, the State and its designated agents must follow the permit restrictions and report all activities conducted under the permit. As always, we retain the right to immediately revoke any permit violated. This process is essentially no different than the current permit-issuance system contained in 50 CFR part 21.

Issue: Some commenters stated that the time period associated with damage management control is too restrictive.

Service Response: We acknowledge that complaints about injurious geese are increasing outside the time frame covered by the special permit. The permit program is designed to specifically address problems caused by resident geese during the time period when hunting seasons cannot be opened. We will continue to address injurious goose problems not covered within the permit time frame on a case-by-case basis.

Issue: Several commenters recommended the issuance of permits for a period of 5 years rather than 3 years.

Service Response: We concur that permits could reasonably be issued for a period of 5 years given timely submission of annual reports documenting the actions taken under authority of the permit. However, failure to submit complete annual reports may result in suspension or revocation of the permit.

Issue: Several commenters recommended elimination of the paperwork and reporting requirements.

Service Response: Information specific to the applicant State's population of resident Canada geese and the take requested is vital to the application and ultimate decision on a permit. The reporting requirement is essential for us to be able to monitor the action and assess possible impacts to the population. Additionally, we will utilize this information and other pertinent biological and population-specific data as the basis for determining the permitted take.

Issue: Several commenters stated that the special permit was unacceptable because it merely shifts costs and workload from the Federal level to the State level without providing additional funds to the States.

Service Response: We are not obligating States to apply for this new permit. States may continue to handle injurious goose situations with the current permitting system on a case-by-case basis.

Issue: Several commenters suggested that conditioning the permit whereby taking Canada geese could occur ''. . . only after applicable non-lethal alternatives means . . . have proven to be unsuccessful or not feasible'' is too restrictive.

Service Response: We never intended that a State would need to prove the need for lethal control at each site before implementation of lethal control techniques. We believe this decision should be based on the experience and judgement of professional wildlife managers on-site. Thus, we have amended the wording of 21.26(c)(1)(I) to read as follows: ''Take of resident Canada geese as a management tool pursuant to this section may not exceed the number authorized by the permit. States should utilize non-lethal goose management tools to the extent they deem appropriate in an effort to minimize lethal take.''

Issue: Several commenters requested clarification that research activities are not included as a part of the proposed permit program.

Service Response: Because the permit program is for the purpose of resolving injurious behavior of resident Canada geese, it is clear that scientific research is not covered. All researchers who are not Federal employees must have a scientific collecting permit to take any migratory birds. We believe additional wording to clarify this point is unnecessary.

Issue: Several commenters requested clarification of designated agents and use of APHIS/WS as designated agents.

Service Response: ''Designated agents'' means individuals or organizations and their employees who have written authority from the State wildlife management agency (permit holder) to implement State-approved resident Canada goose control measures. Thus, States could utilize APHIS/WS as a designated agent.

Issue: Some commenters were concerned that the new permit process does not allow more hunting opportunity.

Service Response: The purpose of the new special permit program is to resolve injurious resident Canada goose problems, not create more hunting opportunity. More specifically, the permit program is designed to address problems caused by resident geese during the time period when hunting seasons cannot be opened. For those States wishing to primarily handle injurious resident populations through sport hunting, sufficient hunting opportunities designed to target resident Canada goose populations, while protecting migrant populations, exist in the current hunting season frameworks.

Issue: Several commenters believed that the size of the resident goose population in the State has little to do with the population causing a problem in a localized area.

Service Response: We designed the new special permit program to allow those States with widespread injurious goose problems the latitude to deal with those problems on a broader management basis than the current case-by-case basis. We believe the State wildlife agency is the logical authority, within the context of the new special permit's guidelines, to determine the proper goose management control activities for the State's resident Canada goose population, including those smaller, more localized populations. However, the new permit program does not preclude a State from applying for a depredation permit under the current permit regulations to deal with a specific localized injurious goose problem. In fact, we realize that injurious situations will continue to occur outside of the March 11 to August 31 time period allowed under the new permit program. We will continue to deal with these situations on a case-by-case basis. Furthermore, as we stated earlier, information on the State's goose population is an essential part of the basis for our permit decisions and our long-term monitoring of the population.

Issue: Several commenters were concerned that this action establishes a precedent for future actions.

Service Response: We reiterate that this program does not establish a precedent for actions with future significant effects or represent a decision in principle about a future consideration. As we stated earlier, in the past, we have issued similar permits for goose control activities on a case-by-case or State-wide basis. States are currently conducting Canada goose damage management activities under these permits. Likewise, we have issued similar regulations, in the form of either depredation orders or permits, for other species, such as the double-crested cormorant, blackbirds, cowbirds, grackles, crows, and magpies. Any future similar actions, either for Canada geese, or any other migratory bird species, would be analyzed under NEPA, with public involvement, on their own merits.

Issue: A large number of commenters indicated that they are philosophically

opposed to the killing of Canada geese and any other ''inhumane'' treatments of these birds. They expressed preferences for non-lethal solutions to all resident Canada goose/human conflicts and pointed out that people need to be more tolerant of wildlife. Some commenters also opposed the removal of geese on the grounds that these management actions were only short-term solutions.

Service Response: We are also opposed to the inhumane treatment of any birds, but do not believe the capture and relocation, or processing for human consumption, of resident Canada geese from human conflict areas is by definition ''inhumane.'' Over the past few years, States have rounded up thousands of problem resident Canada geese and relocated them to unoccupied sites. However, few such unoccupied sites remain. Therefore, we believe that humane lethal control of some geese is an appropriate part of an integrated resident Canada goose damage and control management program.

We also prefer non-lethal control activities, such as habitat modification, as the first means of eliminating resident Canada goose conflict and damage problems and have specified language to this effect in the final regulations. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are sometimes necessary to increase the effectiveness of non-lethal management methods.

There are many situations where resident Canada geese have created injurious situations and damage problems that few people would accept if they had to deal directly with the problem situation. We continue to encourage state wildlife management agencies to work with not only the local citizens impacted by the management actions but all citizens. While it is unlikely that all resident Canada goose/human conflicts can be eliminated in all urban settings, implementation of broad-scale resident Canada goose management activities may result in an overall reduced need for other management actions, such as large-scale goose round-ups and lethal control.

Issue: Some commenters indicated that they were concerned about the potential loss of aesthetic value if Canada geese were removed from areas.

Service Response: While we attempted to consider the views of all those concerned, we admit that this was difficult given the highly variable values people place on geese and other wildlife. Some commenters conveyed their pleasure and appreciation for being able to see geese locally in their neighborhood. However, we must weigh these benefits with the views of other commenters who wanted to see fewer geese because of the damage, including loss in the aesthetic value, being caused by excessive numbers of geese on personal and public property .

Issue: Several commenters believed that the special permit fell far short of providing the States with more authority and less burdensome regulations. Further, it does not provide States with enough management flexibility. They believed a depredation order approach would be a more cost-effective/efficient means to manage injurious resident Canada Geese.

Service Response: As we indicated in the proposed rule, we included the depredation order alternative in the EA. However, while we agree that depredation orders in other circumstances have proven to be valuable tools in wildlife damage management, we believe that management of resident Canada geese deserves special attention and consideration which, at this time, is best provided by the special Canada goose permit program. We believe that the special Canada goose permit program will provide the management flexibility needed to address this serious problem and at the same time simplify the procedures needed to administer this program. The special Canada goose permit program will satisfy the need for an efficient and cost-effective program while allowing us to maintain management control.

However, in the long-term, we realize that more management flexibility will likely be necessary. Because of the unique locations where large numbers of these geese nest, feed, and reside, we believe that new and innovative approaches to dealing with bird/human conflicts will be needed. In order to best deal with this problem, we have begun to develop a short-term and long-term strategy. In the short-term, these regulations to create and issue a new special permit specifically for resident Canada goose control and damage management will significantly reduce Service administrative costs for this activity, provide quicker response to injurious situation and more effectively control resident Canada goose populations throughout the conterminous United States. In the long-term, we have recently begun the initial groundwork, with the full assistance and cooperation of the Flyway Councils and APHIS/WS, to integrate our management of these birds into a larger Flyway management plan system. We believe the end result of this approach should provide States with more management flexibility and authority to deal with resident Canada geese within their State while increasing the commitment to establish population goals and objectives, management planning, and population monitoring.

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Effective Date

Under the Administrative Procedures Act (5 U.S.C. 553 (d)) we waive the 30-day period before the rule becomes effective and find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and so this rule will take effect immediately upon publication. It is not in the public interest to delay the effective date of this rule. In many parts of the country, especially the northeastern and mid-western States, locally-breeding Canada geese have already nested and produced broods. Molting will soon take place (typically mid-June to mid-July) and any delay in the effective date of this rule could reduce the effectiveness of potential damage management actions for this year. It is in the best interest of the public to establish this new special permit program to allow State wildlife agencies the ability to reduce the number and frequency of injurious resident Canada geese. It is also in the best interest of the public to provide alternative regulatory options to address the problem of overabundant resident Canada geese that may affect the public's health and safety.

NEPA Considerations

We prepared an Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, in connection with this regulation. Based on review and evaluation of the information contained in the EA, we determined that the proposed action to amend 50 CFR Part 21 to establish a special Canada goose permit for the control and management of resident Canada geese would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, we made a Finding of No Significant Impact on this action and determined that preparation of an Environmental Impact Statement was not required. The EA is available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''ensure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' Consequently, we initiated Section 7 consultation under the ESA for this rulemaking. You may inspect completed results of our consultation under Section 7 of the ESA at the location indicated under the **ADDRESSES** caption.

Paperwork Reduction Act and Information Collection

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted the necessary paperwork to the Office of Management and Budget (OMB) for approval to collect the information required by the applicant and permittee. Under the Act, OMB must approve information collections. After review, OMB approved the information collection requirements of the Special Canada Goose Permit and assigned clearance number 1018–0099. We will use the information collection requirement to administer this program and in the issuance and monitoring of these special permits. Federal agencies 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. We determined that this rulemaking would not have a significant effect on a substantial number of small entities, which include small businesses, organizations and small governmental jurisdiction. This rule will only effect State wildlife agencies responsible for migratory bird management that wish to initiate a resident Canada goose control and damage management program within our guidelines. We anticipate that less than 45 applicants will annually apply. Therefore, this rule will have minimal effect on small entities.

Small Business Regulatory Enforcement Fairness Act

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

Executive Order 12866

We determined that this rule is not significant under the definition in Executive Order 12866, and therefore, not subject to OMB review.

Unfunded Mandates

We determined and certify in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we hereby amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.3 by adding alphabetically definitions for ''Resident Canada geese'' and ''Service.''

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest within the conterminous United States and/or Canada geese which reside within the conterminous United States during the months of June, July, or August.

Service or *we* means the U.S. Fish and Wildlife Service, Department of the Interior.

3. Add a new § 21.26 to read as follows:

§ 21.26. Special Canada goose permit.

(a) *What is the special Canada goose permit and what is its purpose?* The special Canada goose permit is a permit issued by us to a State wildlife agency authorizing certain resident Canada goose management and control activities

that are normally prohibited. We will only issue such a permit when it will contribute to human health and safety, protect personal property, or allow resolution or prevention of injury to people or property. The management and control activities conducted under the permit are intended to relieve or prevent injurious situations only. No person should construe the permit as opening, reopening, or extending any hunting season contrary to any regulations established under Section 3 of the Migratory Bird Treaty Act.

(b) *Who may receive a permit?* Only State wildlife agencies (State) are eligible to receive a permit to undertake the various goose management and control activities. Additionally, only employees or designated agents of a permitted State wildlife agency may undertake activities for injurious resident Canada geese in accordance with the conditions specified in the permit, conditions contained in 50 CFR part 13, and conditions specified in paragraph (d) of this section.

(c) *How does a State apply for a permit?* Any State wildlife agency wishing to obtain a permit must submit an application to the appropriate Regional Director (see § 13.11(b) of this subchapter) containing the general information and certification required by § 13.12(a) of this subchapter plus the following information:

(1) A detailed statement showing that the goose management and control activities will either provide for human health and safety, protect personal property, or allow resolution of other injury to people or property;

(2) An estimate of the size of the resident Canada goose breeding population in the State;

(3) The requested annual take of resident Canada geese, including eggs and nests;

(4) A statement indicating that the State will inform and brief all employees and designated agents of the requirements of these regulations and permit conditions.

(d) *What are the conditions of the permit?* The special Canada goose permits are subject to the general conditions in 50 CFR part 13, the conditions elsewhere in this section, and, unless otherwise specifically authorized on the permit, the conditions outlined below:

(1) *What are the limitations on management and control activities?* (i) Take of resident Canada geese as a management tool under this section may not exceed the number authorized by the permit. States should utilize non-lethal goose management tools to the extent they deem appropriate in an effort to minimize lethal take.

(ii) Methods of take for the control of injurious resident Canada geese are at the State's discretion. Methods include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other damage control techniques consistent with accepted wildlife damage-management programs.

(2) *When may a State conduct management and control activities?* States and their employees and agents may conduct management and control activities, including the take of resident Canada geese, under this section between March 11 and August 31. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to May 1 through August 31, inclusive.

(3) *How must the States dispose or utilize geese taken under this permit?* States and their employees and agents may possess, transport, and otherwise dispose of Canada geese taken under this section. States must utilize such birds by donation to public museums or public institutions for scientific or educational purposes, by processing them for human consumption and distributing them free of charge to charitable organizations, or by burying or incinerating them. States, their employees, and designated agents may not sell, offer for sale, barter, or ship for the purpose of sale or barter any Canada geese taken under this section, nor their plumage or eggs.

(4) *How does the permit relate to existing State law?* No person conducting management and control activities under this section should construe the permit to authorize the killing of injurious resident Canada geese contrary to any State law or regulation, nor on any Federal land without specific authorization by the responsible management agency. No person may exercise the privileges granted under this section unless they possess any permits required for such activities by any State or Federal land manager.

(5) *When conducting management and control activities, are there any special inspection requirements?* Any State employee or designated agent authorized to carry out management and control activities must have a copy of the permit and designation in their possession when carrying out any activities. The State must also require the property owner or occupant on whose premises the State is conducting activities to allow, at all reasonable times, including during actual operations, free and unrestricted access to any Service special agent or refuge officer, State wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer (wildlife officer) on the premises where they are, or were, conducting activities. Furthermore, any State employee or designated agent conducting such activities must promptly furnish whatever information is required concerning such activities to any such wildlife officer.

(6) *What are the reporting requirements of the permit?* Any State employee or designated agent exercising the privileges granted by this section must keep records of all activities carried out under the authority of this permit, including the number of Canada geese killed and their disposition. The State must submit an annual report detailing activities, including the time, numbers and location of birds, eggs, and nests taken and non-lethal techniques utilized, before December 31 of each year. The State should submit the annual report to the appropriate Assistant Regional Director—Refuges and Wildlife (see § 10.22 of this subchapter).

(7) *What are the limitations of the special permit?* The following limitations apply:

(i) Nothing in this section applies to any Federal land within a State's boundaries without written permission of the Federal Agency with jurisdiction.

(ii) States may not undertake any actions under any permit issued under this section if the activities adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act.

(iii) We will only issue permits to State wildlife agencies in the conterminous United States.

(iv) States may designate agents who must operate under the conditions of the permit.

(v) *How long is the special permit valid?* A special Canada goose permit issued or renewed under this section expires on the date designated on the face of the permit unless it is amended or revoked or such time that we determine that the State's population of resident Canada geese no longer poses a threat to human health or safety, personal property, or injury to other interests. In all cases, the term of the permit may not exceed five (5) years from the date of issuance or renewal.

(vi) *Can we revoke the special permit?* We reserve the right to suspend or revoke any permit, as specified in § 13.27 and § 13.28 of this subchapter.

(e) *What are the OMB information collection requirements of the permit program?* OMB has approved the information collection requirements of the permit and assigned clearance number 1018–0099. Federal agencies 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. We will use the information collection requirements to administer this program and in the issuance and monitoring of these special permits. We will require the information from State wildlife agencies responsible for migratory bird management in order to obtain a special Canada goose permit, and to determine if the applicant meets all the permit issuance criteria, and to protect migratory birds. We estimate the public reporting burden for this collection of information to average 8 hours per response for 45 respondents (States), including the time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and record-keeping for this collection to be 360 hours. States may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, Fish and Wildlife Service, ms 224–ARLSQ, 1849 C Street N.W., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0099, Washington, DC 20503.

Dated: June 9, 1999

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–15408 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday
June 17, 1999

Part X

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting: Withdrawal of Regulations Designed To Reduce the Mid-Continent Light Goose Population; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF05

Migratory Bird Hunting; Withdrawal of Regulations Designed To Reduce the Mid-Continent Light Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or ''we'') is withdrawing the regulations that authorized the use of additional hunting methods (electronic calls and unplugged shotguns) to increase take of mid-continent light geese. We are also withdrawing the regulation that established a conservation order for the reduction of mid-continent light goose populations.

DATES: This rule takes effect immediately upon publication on June 17, 1999.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Because high populations of Mid-continent light geese (MCLG), are leading to the habitat destruction described below, we believe that management action is necessary. In fact, we promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of light geese and established a conservation order for the reduction of the MLGP. In issuing those regulations, we indicated that we would initiate preparation of an Environmental Impact Statement (EIS) beginning in 2000 to consider the effects on the human environment of a range of long-term resolutions for the MCLG population problem. Those regulations were subsequently challenged in a United States District Court by the Humane Society of the United States (HSUS) and other groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on the larger, long-term program and to preclude further litigation on the issue, we have decided to withdraw the regulations and to begin preparation of the EIS now.

Background

Lesser snow (*Anser caerulescens caerulescens*) and Ross' (*Anser rossii*) geese that primarily migrate through the Mississippi and Central Flyways are collectively referred to as Mid-continent light geese (MCLG). They are referred to as ''light'' geese due to the light coloration of the white-phase plumage form, as opposed to ''dark'' geese such as the white-fronted or Canada goose. We include both plumage forms of lesser snow geese (white, or ''snow'' and dark, or ''blue'') under the designation light geese. MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. The total MCLG population is experiencing a high population growth rate and has become seriously injurious to its arctic and subarctic breeding grounds through the feeding actions of geese. Our management goal is to reduce the MCLG population by 50% by the year 2005 in order to prevent further habitat degradation.

We have attempted to curb the growth of the total MCLG population by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Migratory Bird Treaty. However, due to the rapid rise in the MCLG population, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested) has declined despite evidence that the actual number of geese harvested has increased (USFWS 1997b). The decline in harvest rate indicates that the current management strategies are not sufficient to stabilize or reduce the population growth rate.

On February 16, 1999, we published rules that: (1) authorized additional methods of take of MCLG (electronic calls and unplugged shotguns; 64 FR 7507); and (2) created a conservation order for the reduction of the MCLG population (64 FR 7517). These actions were designed to reduce the population of MCLG over a period of several years in order to bring the population to a level that their breeding habitat can support. We prepared an Environmental Assessment (EA) in support of this program, which resulted in a Finding of No Significant Impact.

On February 25, 1999, the HSUS and other groups filed a complaint in the District Court for the District of Columbia seeking an injunction against these regulations. On March 2, 1999, the plaintiffs filed a motion for a preliminary injunction against the two rules cited above. The lawsuit alleged that we had implemented the rules without adequate scientific evidence that MCLG were causing habitat destruction, that we did not have the authority under the Migratory Bird Treaty to allow take of MCLG after March 10, and that an Environmental Impact Statement (EIS) should have been prepared prior to implementation of the rules. Although the judge refused to issue an injunction, he did indicate a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, and because we had earlier indicated we would begin preparing in the year 2000 an EIS on the larger, long-term program, we have decided to withdraw the regulations and begin preparation of that EIS now.

Effective Date

Under 5 U.S.C. 553 (b)(3)(B), we find that the notice required by § 553 (b) does not apply to this rule withdrawal because, for the following reasons, it is unnecessary and not in the public interest. We are reinstating rules with regard to light geese that have been in place and implemented for many years and which were adopted after notice and opportunity for public comment. In addition, the Service is preparing an EIS that will address all of the larger, long-term issues for light goose management, including take regulations, which will involve significant opportunities for public involvement and comment. Any regulations that may result from the EIS process would be adopted only after notice and opportunity for public comment. Finally, it is in the public interest because withdrawal of the regulations will allow us to conclude the litigation initiated by the HSUS and avoid in-season problems. Although the judge in that case did not preliminarily enjoin the new regulations, he did indicate that a decision on the merits might find them procedurally deficient. If that were to occur during the 1999–2000 hunting season, States and their licensed hunters would experience significant confusion and enforcement and administrative problems. In addition, under 5 U.S.C. 553 (d), for the above reasons, we find that good cause exists to put this rule into effect immediately upon publication.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment in January 1999. This EA is available to the public at the location

indicated under the **ADDRESSES** caption. We will initiate the preparation of an EIS to consider the effects on the human environment of a range of alternatives for management of the MCLG population. A Notice of Intent to prepare the EIS was published in the **Federal Register** on May 13, 1999 (64 FR 26268).

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of (critical) habitat . . .'' We completed a Section 7 consultation under the ESA for the rules that are being withdrawn. Withdrawal of the rules will not affect any threatened, endangered, proposed or candidate species. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The economic impacts of this rulemaking will fall primarily on small businesses because of the structure of the waterfowl hunting related industries. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. We estimated that implementation of these regulations would have reduced the risk of light-goose season closures in the Central and Mississippi Flyways, subsequently avoiding a $70 million loss in output and reducing the possibility of increased agricultural loss. We estimated that special MCLG population control efforts would have created additional take opportunities that were expected to add $18 million in output to local economies. We have determined that a Regulatory Flexibility Act Analysis is not required.

Executive Order 12866

This rule was not subject to review by the Office of Management and Budget under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Congressional Review

This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), this rule has been submitted to Congress. Because this rule deals with our migratory bird hunting program, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act and Information Collection

This regulation does not require any information collection for which OMB approval is required under the Paperwork Reduction Act. Information collection for any light goose harvest that occurred prior to the withdrawal of these regulations is covered by an existing OMB approval number. Agencies 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 approved the information collection of the conservation order prior to withdrawal of the regulation and assigned clearance number 1018–0103 (expires 01/31/2002).

Unfunded Mandates

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act (2 U.S.C. 1502 et seq.), that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule will not ''significantly or uniquely'' affect small governments. No governments below the State level will be affected by this rule. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under Unfunded Mandates.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. This rule has been reviewed by the Office of the Solicitor. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. The rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects.

Authorship

The primary author of this final rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby amend parts 20 and 21, of the subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

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

Authority: 16 U.S.C. 703–712; and 16 U.S.C 742a–j.

2. Revise paragraphs (b) and (g) of § 20.21 *Hunting methods* to read as follows:

§ 20.21 Hunting methods

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;

* * * * *

3. Revise § 20.22 *Closed seasons* to read as follows:

§ 20.22 Closed seasons

No person shall take migratory game birds during the closed season.

PART 21—[AMENDED]

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

SUBPART E—[REMOVED]

2. Remove Subpart E, consisting of § 21.60.

Dated: June 3, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–15338 Filed 6–16–99; 8:45 am]

BILLING CODE 4310–55–P

Thursday
June 17, 1999

Part XI

Department of Housing and Urban Development

24 CFR Part 245

Tenant Participation in Multifamily Housing Projects; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR–4403–P–01]

RIN 2502–AH32

Tenant Participation in Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for tenant participation in multifamily housing projects. Specifically, the proposed rule would expand the number of categories of multifamily housing projects in which tenants have the right to establish and operate tenant organizations. The proposed rule would clarify the reasonable activities that the owner of a multifamily housing project, covered under this proposed rule, must allow tenants and tenant organizers to engage in while organizing their co-tenants and operating a tenant organization. The proposed rule would also clarify the requirements for establishing and operating a tenant organization.

DATES: *Comments Due Date:* August 16, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Multifamily Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

a. Tenant Participation in Multifamily Housing Projects

HUD supports the active involvement of tenants in creating and maintaining a suitable living environment and in contributing to the successful operation of their multifamily housing projects. This proposed rule would amend HUD's regulations at 24 CFR part 245 (entitled ''Tenant Participation in Multifamily Housing Projects'') to increase the number of categories of multifamily housing projects covered by part 245. The rule would also clarify the reasonable activities that tenants and tenant organizations may engage in and the requirements for establishing and operating a tenant organization. The amendments proposed by this rule are discussed below.

b. Increased Number of Categories of Multifamily Housing Projects Covered

The statutory authority for part 245 is section 202 of the Housing and Community Development Amendments of 1978 (Pub. L. 95–557, 92 Stat. 2080, 12 U.S.C. 1715z–1b) (1978 HCD Amendments Act). The coverage of section 202 was expanded by section 183 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, 101 Stat. 1815) (1987 HCD Act). This amendment added multifamily housing projects ''eligible for assistance as described in * * * section 202 of the Housing Act of 1959'' (1959 Housing Act).

The coverage of section 202 of the 1978 HCD Amendments Act was expanded again in 1998 by section 599 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, 112 Stat. 2461). This amendment added multifamily housing projects that receive:

> project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

The proposed rule would revise § 245.10 (entitled ''Applicability of part'') to reflect these various statutory amendments to section 202 of the 1978 HCD Amendments Act. The proposed rule would make the following changes to § 245.10:

1. Paragraph (a)(2) (entitled ''Section 202 project'') would be removed along with the accompanying definition of ''Section 202 Loans for the Elderly or Handicapped BMIR Program'' from paragraph (c). These paragraphs limited the type of Section 202 project covered by part 245. They are no longer applicable because of section 183 of the 1987 HCD Act, which amended section 202 of the 1978 HCD Amendments Act to include coverage of all Section 202 projects (note: the term ''Section 202 projects'' refers to section 202 of the 1959 Housing Act).

2. Paragraphs (a)(4)–(a)(7) would be added. Each paragraph would add a new category of multifamily housing project as follows:

Paragraph	Would add multifamily housing projects receiving
(a)(4)	Project-based assistance under section 8 of the United States Housing Act of 1937.
(a)(5)	Enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.
(a)(6)	Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program.
(a)(7)	Section 811 Supportive Housing for Persons with Disabilities program.

Section 245.10(a)(7) of this proposed rule would add Section 811 multifamily housing projects even though these projects are not explicitly mentioned in section 202 of the 1978 HCD Amendments Act. As noted, section 183 of the 1987 HCD Act expanded the scope of section 202 of the 1978 HCD Amendments Act to include multifamily housing projects described in section 202 of the 1959 Housing Act. At the time of the 1987 amendments, section 202 of the 1959 Housing Act included multifamily housing projects that are currently part of the Section 811 program. The Section 811 program was split out of section 202 of the 1959 Housing Act in 1990 by the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625, 104 Stat. 4079). HUD does not believe that Congress intended to narrow the coverage of section 202 of the 1978 HCD Amendments Act to limit the ability of Section 811 residents to participate in tenant organization activities. HUD, therefore, is proposing to revise part 245 to reflect the coverage of section 202 of the 1959 Housing Act before its amendment in 1990.

c. Protected Activities

The role of the tenant organization is, among other things, to increase tenant participation and awareness in creating and maintaining a positive living environment. In order to achieve this goal, the proposed rule would require that owners of multifamily housing projects, covered under this proposed rule, allow tenants and tenant organizers to conduct reasonable activities related to the establishment and operation of a tenant organization.

The existing regulations preclude owners of multifamily housing projects from impeding the reasonable efforts of tenants to organize, but they are not specific with respect to what actions may constitute reasonable efforts. This lack of specificity, in a number of cases, has led to confusion. This confusion has contributed to disputes between owners and tenants and between owners and those attempting to organize tenants.

In an attempt to avoid this confusion, the proposed rule would retain the current reasonableness standard while listing specific activities that are protected. The list of activities is not exhaustive, but provides specific examples that would assist tenants, owners, and tenant organizers to determine what constitutes a protected activity under the part 245 regulations. The proposed rule would still require that owners of multifamily housing projects allow tenants and tenant organizers to conduct reasonable activities related to the establishment and operation of a tenant organization, in addition to the specific activities listed in the proposed rule.

Protected activities listed in the proposed rule include the distribution or posting of information regarding tenant organizations, initiating contact with tenants, assisting tenants to participate in tenant organization activities, convening regularly scheduled meetings on site, and formulating responses to various owner proposals such as rent increases, conversion from project-based paid utilities to tenant-paid utilities, tenant utility allowance reductions, conversion of residential units to non-residential use, cooperative housing, or condominiums, and major capital additions.

d. Tenant Organizers

Under the proposed rule, a tenant organization must consist of the tenants of a multifamily housing project covered under this proposed rule. However, tenants may have the assistance of tenant organizers who need not be tenants of the housing project. Where a tenant organizer is not a tenant of the housing project and the owner of the housing project has a consistently enforced policy against door-to-door solicitation, the tenant organizer must be accompanied by a tenant while conducting tenant organization related activities on the housing project property.

Where the tenant organizer is not a tenant of the housing project and the owner of the housing project has a policy favoring solicitation, the non-tenant tenant organizer must likewise be afforded the same privileges and rights of access as other uninvited outside parties would have in the normal course of operations. If the owner of the housing project does not have a consistently enforced policy against solicitation, the housing project shall, for purposes of the tenant organizer's right to access, be treated as if it has a policy favoring solicitation.

e. Properly Established Tenant Organizations

The proposed rule would require owners of multifamily housing projects, covered under the proposed rule, to give reasonable consideration to concerns raised by a properly established tenant organization. Further, the owner must recognize the right of tenants to establish or replace a tenant organization. Under the proposed rule, a tenant organization has been properly established, if it has been established by the tenants of a multifamily housing project covered under 24 CFR 245.10 for the purpose of addressing the terms and conditions of their tenancy, has adopted written procedures in compliance with the proposed rule, and has elected a governing board in compliance with the proposed rule.

f. Additional Tenant Organizations

While HUD believes that, generally, one established tenant organization, elected by the tenants, presents the most effective means of providing a voice for tenants in relations with multifamily housing project owners, management agents, and HUD, HUD recognizes the fact that the established organization may not always adequately represent the concerns and opinions of all of the tenants.

To address this issue, the proposed rule requires owners and management agents to recognize the rights of tenants to organize to replace the leadership of an existing tenant organization through recall elections, to establish issue-based organizations in response to specific tenants' issues, or to establish additional tenant organizations. A tenant organizer may assist tenants in organizing a recall election or establishing additional tenant organizations.

g. Enforcement Through Regulatory Agreements

If an owner does not comply with the provisions of its regulatory agreement with HUD, HUD has the right to declare a breach of the agreement. Regulatory agreements for most current insured mortgages mandate that owners adhere to HUD management requirements. The right of tenants to organize is such a requirement.

Notwithstanding this existing general enforcement authority, in order to provide greater clarity to owners, upon publication of a final rule, HUD intends to revise regulatory agreements to include the right of tenants to organize explicitly in the agreement itself. HUD will have the opportunity to revise the regulatory agreements during the development of new housing projects or whenever an owner seeks assistance or relief that requires an amendment to an existing regulatory agreement. For example, this might occur in a partial payment of claim, a bond refunding, or transfer of physical assets (sale of property). In addition to revising the regulatory agreements, HUD expects to take other appropriate actions (such as updating its handbooks and providing instructions to field office staff) to assist tenants and owners in implementing this rule.

h. Public Comments on This Proposed Rule

In order to reach consensus on the issue of the rights of tenants to organize multiple tenant organizations, and in the spirit of partnership and cooperation, HUD invites comments on this proposed rule from the public, particularly representatives of housing project owners, management agents, tenants and tenant groups, and all other interested parties. HUD will consider all of the comments in the development of the final rule.

II. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (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 proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects and would have minimal economic impact on the owners of covered projects. Although the rule would require that owners permit tenants and tenant organizers to conduct reasonable activities related to the establishment or operation of tenant organizations, it would not impose any affirmative obligations on owners to assist tenant organizations in the conduct of these activities. For example, the owners of covered projects would not be required to contribute, economically or otherwise, to the preparation or distribution of leaflets and other informational materials developed by a tenant organization.

The proposed rule would permit tenant organizations to develop responses to economic proposals made by owners, such as rent increases and major capital additions. While HUD encourages owners to take these responses into consideration, the proposed rule would not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization.

Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

The General Counsel, as the Designated Official for HUD under Section 6(a) of Executive Order 12612 (entitled ''Federalism''), has determined that this rule would not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects. Specifically, this proposed rule would expand the categories of multifamily housing projects in which tenants have the right to establish and operate tenant organizations. The proposed rule would also clarify the requirements for establishing and operating a tenant organization and the activities that owners of multifamily housing projects must allow tenant organizations to engage in. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal government and State and local governments.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

For the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 245 as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

2. Amend § 245.10 as follows:

a. Remove paragraph (a)(2);

b. Remove from paragraph (c) the definition of ''Section 202 Loans for the Elderly or Handicapped BMIR Program'';

c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;

d. Revise redesignated paragraphs (a)(2)(ii) and (a)(3); and

e. Add paragraphs (a)(4)–(7) to read as follows:

§ 245.10 Applicability of part.

(a) * * *

(2) * * *

(ii) Was sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low-and moderate-income character of the project;

(3) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A and C of this part and of subpart D of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

(4) The project receives project-based assistance under section 8 of the United States Housing Act of 1937;

(5) The project receives enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997;

(6) The project receives assistance under the Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program; or

(7) The project receives assistance under the Section 811 Supportive Housing for Persons with Disabilities program.

* * * * *

Subpart B—Tenant Organizations

3. Add § 245.100 to read as follows:

§ 245.100 Right of tenants to organize.

The tenants of a multifamily housing project covered under § 245.10 have the

right to establish and operate a tenant organization for the purpose of addressing the terms and conditions of their tenancy.

4. Revise §§ 245.105 and 245.110 to read as follows:

§ 245.105 Recognition of tenant organizations.

Owners of multifamily housing projects covered under § 245.10, and their agents, must:

(a) Recognize properly established tenant organizations; and

(b) Give reasonable consideration to concerns raised by properly established tenant organizations.

§ 245.110 Properly established tenant organizations.

A tenant organization has been properly established if it has:

(a) Been established by the tenants of a multifamily housing project covered under § 245.10 for the purpose of addressing the terms and conditions of their tenancy;

(b) Adopted written procedures in compliance with § 245.115; and

(c) Elected a governing board in compliance with § 245.120.

5. Add §§ 245.115, 245.120, 245.125, 245.130, 245.135, 245.140, 245.145, 245.150, 245.155, and 245.160 to read as follows:

§ 245.115 Constitution or by-laws.

A tenant organization must adopt written procedures either in the form of a constitution or in the form of by-laws. A tenant organization may determine the contents and structure of its constitution or by-laws, however, the constitution or by-laws must, at a minimum, contain:

(a) Procedures for the election of a governing board, which assure fair elections;

(b) Procedures for instituting a recall election to remove a governing board or board member;

(c) The percentage of qualified voting members needed to hold a recall election, which may not be less than ten percent;

(d) The frequency of elections;

(e) The qualifications needed to run for a seat on the governing board; and

(f) The structure of the governing board.

§ 245.120 Governing board.

(a) *Structure.* A tenant organization may determine the structure of its governing board, however, the governing board must, at a minimum:

(1) Be democratically elected; and

(2) Consist of at least five members whose terms are staggered.

(b) *Qualification to serve on governing board.* A tenant organization may determine the qualifications required to serve on its governing board, however, a candidate for a seat on the governing board must, at a minimum be:

(1) A qualified voting member; and

(2) In compliance with the lease.

(c) *Term length and term limits.* A tenant organization may determine the length of a term for seats on the governing board, however, a seat on a governing board may not be held for more than three consecutive years. A tenant organization may determine whether a person serving on the governing board may be limited in the number of terms served.

§ 245.125 Qualified voting member.

(a) A person is a qualified voting member and may vote in any election involving the activities of a tenant organization, if the person is:

(1) Eighteen years of age or older; and

(2) Named in the lease for an apartment unit in the multifamily housing project represented by the tenant organization.

(b) A qualified voting member may designate another person to vote in an election, if that person is:

(1) Eighteen years of age or older; and

(2) Resides in the same apartment unit as the qualified voting member.

§ 245.130 Number of votes.

Each apartment unit in a multifamily housing project receives one vote per election, regardless of the number of occupants of that apartment unit.

§ 245.135 Election notices.

All qualified voting members of a tenant organization must be given at least thirty days notice of any elections relating to the activities of the tenant organization. This notice must include:

(a) A description of the tenant organization's election procedures;

(b) A description of the election eligibility requirements; and

(c) The dates of nominations and elections.

§ 245.140 Protected activities.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

(1) Distributing leaflets in lobby areas;

(2) Placing leaflets at or under tenants' doors;

(3) Distributing leaflets in common areas;

(4) Initiating contact with tenants;

(5) Conducting an initial door-to-door survey of tenants to solicit interest in establishing a tenant organization and to offer information about tenant organizations;

(6) Posting information on bulletin boards;

(7) Assisting tenants to participate in tenant organization activities;

(8) Convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants; and

(9) Formulating responses to owner's requests for:

(i) Rent increases;

(ii) Partial payment of claims;

(iii) The conversion from project-based paid utilities to tenant-paid utilities;

(iv) A reduction in tenant utility allowances;

(v) Converting residential units to non-residential use, cooperative housing, or condominiums;

(vi) Major capital additions; and

(vii) Prepayment of loans.

(b) In addition to the activities listed in paragraph (a) of this section, owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization.

§ 245.145 Meeting space.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:

(1) Tenants or a tenant organization and used for activities related to the operation of the tenant organization; or

(2) Tenants seeking to establish a tenant organization or collectively address the terms and conditions of their tenancy.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities.

(c) *Fees.* An owner of a multifamily housing project covered under § 245.10 may charge a fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. An owner may waive this fee.

§ 245.150 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenant

organizers to assist tenants in establishing and operating tenant organizations.

(c) Non-tenant tenant organizers. (1) If a multifamily housing project covered under § 245.10 has a consistently enforced policy against solicitation, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project.

(2) If a multifamily housing project covered under § 245.10 has a policy favoring solicitation, any non-tenant tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently enforced policy against solicitation, the project shall be treated as if it has a policy favoring solicitation.

§ 245.155 Tenant's right not to be re-solicited.

A tenant has the right to not be re-solicited regarding participation in a tenant organization.

§ 245.160 Additional tenant organizations.

(a) There may be more than one tenant organization for each multifamily housing project covered under § 245.10.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must recognize the rights of tenants to organize to replace the leadership of an existing tenant organization through recall elections, to establish issue-based organizations in response to specific tenants' issues, and to establish additional tenant organizations. A tenant organizer may assist tenants in organizing a recall election or establishing additional tenant organizations.

Dated: March 25, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–15430 Filed 6–16–99; 8:45 am]

BILLING CODE 4210–27–P

federal register

Thursday
June 17, 1999

Part XII

Department of Agriculture

Food Safety and Inspection Service

Department of Health and Human Services

Centers for Disease Control and Prevention
Food and Drug Administration

Environmental Protection Agency

President's Council on Food Safety; Notice of Meeting; Notice

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98-045N]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

[Docket No. 97N–0074]

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. OPP–00550B; FRL–6087–7]

President's Council on Food Safety; Notice of Meeting

AGENCY: Food Safety and Inspection Service, USDA; Research, Education, and Economics, USDA; Centers for Disease Control and Prevention, HHS; Food and Drug Administration, HHS; Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The President's Council on Food Safety was established in August 1998 under Executive Order 13100 to strengthen and focus our efforts to coordinate food safety policy and resources. The Council was directed to develop a comprehensive national food safety strategic plan. The United States Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) are announcing a public meeting to discuss development of the plan. The purpose of the strategic plan is to reduce the annual incidence of acute and chronic foodborne and waterborne illness by further enhancing the safety of the nation's food supply. USDA, the Food and Drug Administration (FDA), and EPA have established public dockets to receive comments about the President's Council on Food Safety strategic planning process and the plan.

DATES: The meeting will be held on July 15, 1999, from 8:30 a.m. to 5 p.m. Comments should be submitted by September 1, 1999.

ADDRESSES: The meeting will be held at: The Washington Plaza Hotel, 10 Thomas Circle, Massachusetts Avenue and 14th Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: To register for this meeting, call Ms. Sheila Johnson on (202) 501–7305. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Johnson by July 7, 1999.

For further information about the meeting, call Mr. Robert Tynan, of USDA, on (202) 205–7393 or e-mail: robert.tynan@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1997, the President issued a directive to the Secretaries of USDA and HHS and the Administrator of EPA to work with consumers, producers, industry, States, Tribes, universities, and the public to identify ways to further improve the safety of our food supply, and report back to him in 90 days. The Federal food safety agencies, working with their colleagues in the States, in the food industries, in academia, and with consumers, initially focused on the goal of reducing illness caused by microbial contamination of food and water. This goal was to be reached through systematic improvements in six key components of the food safety system: Foodborne outbreak response coordination, surveillance, inspections, research, risk assessment, and education. The plan for meeting this goal was presented to the President in May 1997, in ''Food Safety from Farm to Table: A National Food Safety Initiative.''

In less than 2 years, the agencies have taken significant strides forward in building a strengthened national food safety system. Building blocks for the infrastructure are in place: Increased targeted surveillance through FoodNet and PulseNet; coordination of Federal, State, and local responses to outbreaks by the Foodborne Outbreak Response Coordinating Group (FORCG); expanded reliance on preventive controls (such as the Hazard Analysis and Critical Control Point (HACCP) based inspection systems for meat, poultry, and seafood, and Good Agricultural and Good Manufacturing Practices guidance for produce); coordination of Federal food safety research; cooperation on risk assessment through the interagency Risk Assessment Consortium; leveraging inspection resources; and innovative public and private partnerships. These efforts provide a common ground for moving forward.

In the May 1997 report, the food safety agencies made a commitment to prepare a 5-year comprehensive strategic plan, with the participation of all concerned parties. By Executive Order 13100, the President established the President's Council on Food Safety that will be responsible for development of a comprehensive strategic Federal food safety plan. A coordinated food safety strategic planning effort is needed to tackle some of the difficult public health, resource, and management questions facing Federal food safety agencies. Although microbial contamination will remain an area of emphasis, the strategic plan will address the full range of issues (e.g., chemical contamination, pesticides, food additives, and physical hazards) and actions necessary to ensure the safety of the food and water Americans use and consume. The charge is to develop a strategic long-range plan that can be used to help set priorities, improve coordination and efficiency, identify gaps in the current system and how to fill those gaps, enhance and strengthen prevention and intervention strategies and identify measures to show progress. In developing the plan, the agencies will consider the conclusions and recommendations of the National Academy of Sciences Report on ''Ensuring Safe Food from Production to Consumption'' and the review of Federal food safety research and the research plan currently being developed by an interagency working group under the auspices of the National Science and Technology Council.

The food safety agencies, as part of their work on the President's Council on Food Safety, have already taken the first steps to lay the groundwork for the development of the strategic plan by participating in interagency strategic planning sessions. The agencies also engaged consumers, producers, industry, food service providers, retailers, health professionals, State and local governments, Tribes, academia, and the public in the strategic planning process through a series of public meetings beginning in October 1998. The purpose of those meetings was to obtain the public's view on a long-term vision for food safety in the U.S. and to identify a strategic planning process that involves interested parties, addresses the important food safety challenges, and makes the best use of agency resources. As a result of those public meetings, a vision statement is currently being revised. The revised vision statement will be available at the July meeting.

The Council has also developed a series of five draft food safety goals that create the framework for the food safety strategic plan. Each draft goal is accompanied by broad objectives designed to achieve that goal. The Council has chosen a twofold process using internal agency resources and external public comment involving all interested parties to review and refine the goals and objectives as well as to add more specific action items to the objectives.

First, the Council has designated five government agency planning

workgroups to assist in the development of a final strategic plan. Each workgroup will be responsible for the further development of one of the goals and its objectives within the plan. Under the guidance and direction of the Council, each workgroup will perform the following tasks for its assigned goal statement and objectives:

- Refine the goals and objectives provided by the Council.
- Develop the next level of action items for the plan.
- Assist in the preparation and presentation of public and stakeholder meetings related to the planning process by: Developing appropriate discussion questions related to the goal; participating in breakout sessions concerning the goal; and reviewing and incorporating appropriate public comments into the plan.

Second, the Council wants to engage all interested stakeholders in the development of the actual plan as it did in the earlier dialogue surrounding the agencies' vision for the U.S. food safety system and the roles of all those involved. The Council is planning two public meetings during the summer and fall of 1999 to share the draft plan and obtain public input. In addition, the Council is considering engaging in a series of three to five stakeholder meetings to take place in conjunction with scientific or professional conferences scheduled over the next 6 to 9 months.

The first public meeting is scheduled for July 15, 1999, at the Washington Plaza Hotel in Washington, DC. The purpose of the July 15th meeting is to obtain the public's input on the draft goals and objectives, as well as to provide comments and suggestions on specific action items for inclusion in the plan. The meeting is intended to be a working meeting; therefore, the agenda will follow almost exclusively a breakout session format. The breakout sessions will be organized around the goals and objectives and include members of the agency planning workgroups to lead and facilitate discussions. The workgroups are currently developing several illustrative action items and questions concerning the goals and objectives to encourage and focus participant comments during the breakout sessions. The agenda will be designed to obtain the maximum input from the participants with a minimum of reporting during the meeting from the breakout groups. Summaries of all discussions will be available within 30 days from the end of the public meeting. The second fall public meeting will be announced in the **Federal Register** prior to the date of the meeting. This meeting will obtain public input on a more refined draft of the strategic plan.

The draft goals and objectives to be discussed at the meeting are as follows:

Draft Inter-Agency Food Safety Strategic Plan—Goals and Objectives

Overarching Goal: To protect public health by significantly reducing the number of foodborne illnesses through science-based and coordinated regulation, inspection, enforcement, research, and education programs.

Goal 1: Ensure the development and use of a comprehensive scientific and technological food safety knowledge base to support prevention, regulation, inspection, surveillance, and education programs.

Objectives:

- Develop a national food safety research and technology infrastructure.
- Develop and improve data, methods, models, and measures to assess health effects, including a better understanding of the factors that affect sensitivity to foodborne illness (e.g., age and health status).
- Develop new and improve existing data, methods, models, and measures to assess exposure, including improved analytical and surveillance methods.
- Develop better, integrated (uniform) national and international risk assessment capability and conduct risk assessments.
- Develop and improve prevention/control methods and risk management practices through better integration of research.
- Coordinate and evaluate research on the highest priority food safety issues and efficiently leverage Federal agencies' research resources.
- Develop adequate technological support, including advanced modeling technology, for risk assessment and risk management.

Goal 2: Improve the effectiveness of surveillance, outbreak investigation, and response.

Objectives:

- Enhance and expand foodborne disease and hazard monitoring and surveillance systems.
- Identify, investigate, and track the causes of foodborne infections to determine sources and exposed populations.
- Provide better information to health professionals and physicians about the causes and effects of foodborne illness to more effectively detect and treat these illnesses.
- Improve outbreak coordination and investigation amongst Federal, State, and local agencies for more efficient, effective responses to foodborne contamination and illness.
- Strengthen and expand traceback, intervention, and recall capability; improve coordination on tracebacks and recalls.

Goal 3: Identify and manage food safety risks through protective standards, inspection, and enforcement from farm to table.

Objectives:

- Improve the safety of the nation's food supply to protect public health to the greatest extent possible through priority- and science-based standards, guidance, and other measures, including effective food safety management strategies by processors and providers.
- Develop and implement preventive techniques and controls.
- Ensure priority-based effective and efficient monitoring and inspection of the food supply.
- Protect our food supply in accordance with U.S. statutes and where appropriate internationally recognized science-based standards.
- Ensure contaminated water will not contaminate food during its production, processing, or reconstitution.

Goal 4: Ensure that all people who come into contact with food from farm to table are fully informed of the risks and measures to prevent or reduce foodborne illnesses.

Objectives:

- Foster basic understanding of food safety principles.
- Enhance the public's timely accessibility to accurate information that will help them make informed decisions about their food and the risks.
- Provide education and information to eliminate unsafe food handling practices at each point in the food chain (producers, processors, transporters, preparers, retailers, and consumers).
- Improve communication and information to the public so that they are informed about foodborne illness incidences, but are not unduly alarmed.

Goal 5: Create a national and to the extent possible an international seamless food safety system from farm to table.

Objectives:

- Ensure a complete set of Federal statutory authorities for an effective, prevention-based food safety system, including authorities for information collection and dissemination, rulemaking, inspection, enforcement, and expedited review of food safety technologies.
- Develop and implement a seamless Federal food safety system that supports effective regulation and administration of food safety programs.
- Coordinate and integrate Federal, State, and local actions to provide efficient, effective, and timely

protection of the food supply and eliminate gaps by focusing and delivering resources where they are needed.

- Optimize use of available food safety resources at all levels of government to carry out the monitoring, inspections, outbreak response, traceback, and training necessary for an appropriate level of public protection nationwide.
- Enhance international understanding and acceptance of food safety standards that are in accordance with U.S. statutes and international trade agreements.

The workgroups are continuing to refine these goals, objectives, and action items in preparation for the July 15th meeting. Therefore, the material distributed at the meeting may differ slightly from the information provided in this Notice.

II. Public Dockets and Submission of Comments

The Agencies have established public dockets for the President's Council on Food Safety Strategic Plan. Comments submitted to the dockets are to be identified with the appropriate docket number. For those comments directed to USDA, use Docket No. 98–045N, and for comments directed to FDA, use Docket No. 97N–0074. Commenters are encouraged to submit a disk with their written comments in WordPerfect 5.1/6.1 or ASCII file format. Submit written comments (in triplicate) to:

USDA/FSIS

USDA/FSIS Hearing Clerk, 300 12th Street, SW., Rm. 102 Cotton Annex, Washington, DC 20250–3700.

FDA

FDA/Dockets Management Branch (HFA–305), 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Electronic Comments

Comments may also be submitted electronically to: oppts.homepage@epa.gov. All comments and data in an electronic format must be identified by the docket number OPP–00550. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Meeting Summaries

Summaries of the public meeting will be posted on the Internet at: www.foodsafety.gov. This website is a joint FDA, USDA, and EPA food safety homepage. It is linked to each agency for persons seeking additional food safety information. Summaries of the public meeting may also be requested in writing from the Dockets Management Branch (HFA–305), FDA, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, approximately 15 business days after the meeting at a cost of 10 cents per page. The summaries of the public meeting will be available for public examination at the above-mentioned office between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

The public docket in its entirety will be available on the Internet at: http://www.epa.gov/opptsfrs/home/rules.htm#docket.

List of Subjects

Environmental protection, Food safety.

Dated: June 14, 1999.

Catherine E. Woteki,

Undersecretary for Food Safety, United States Department of Agriculture.

Dated: June 14, 1999.

James A. O'Hara,

Deputy Assistant Secretary for Health, Department of Health and Human Services.

Dated: June 14, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances, Environmental Protection Agency.

[FR Doc. 99–15533 Filed 6–15–99; 2:20 pm]

BILLING CODE 6560–50–F

Federal Register

Thursday
June 17, 1999

Part XIII

The President

Executive Order 13127—Amendment to Executive Order 13073, Year 2000 Conversion

Federal Register
Vol. 64, No. 116
Thursday, June 17, 1999

Presidential Documents

Title 3—

The President

Executive Order 13127 of June 14, 1999

Amendment to Executive Order 13073, Year 2000 Conversion

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to create the Information Coordination Center to assist the Chair of the President's Council on Year 2000 Conversion in addressing year 2000 conversion problems both domestically and internationally, it is hereby ordered that Executive Order 13073 is amended as follows:

Section 1. A new section 5 is added to the order and shall read ''**Sec. 5.** *Information Coordination Center.* (a) To assist the Chair in the Y2K response duties included under section 2(c) of this order, there shall be established the Information Coordination Center (ICC) in the General Services Administration.

(b) At the direction of the Chair, the ICC will assist in making preparations for information sharing and coordination within the Federal Government and key components of the public and private sectors, coordinating agency assessments of Y2K emergencies that could have an adverse affect on U.S. interests at home and abroad, and, if necessary, assisting Federal agencies and the Chair in reconstitution processes where appropriate.

(c) The ICC will:

(1) consist of officials from executive agencies, designated by agency heads under subsection 3(a)(2) of this order, who have expertise in important management and technical areas, computer hardware, software or security systems, reconstitution and recovery, and of additional personnel hired directly or by contract, as required, to carry out the duties described under section 5 of this order;

(2) work with the Council and the Office of Management and Budget to assure that Federal efforts to restore critical systems are coordinated with efforts managed by Federal agencies acting under existing emergency response authorities.''

(d) The Chair of the President's Council on Year 2000 Conversion shall designate a Director of the ICC.

Sec. 2. The preexisting section 5 of Executive Order 13073 shall be renumbered as section 6.

THE WHITE HOUSE,
June 14, 1999.

[FR Doc. 99–15623
Filed 6–16–99; 9:02 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Historic Preservation, Advisory Council

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SBA's 8(a) Business Development Program; published 6-17-99

Taxpayer identification numbers; published 6-17-99

Technical amendments; published 6-17-99

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Oil and natural gas production and natural gas transmission and storage; published 6-17-99

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Licensing process simplification and flexibility for public coast stations; published 5-18-99

Radio stations; table of assignments:

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Information technology acquisition restrictions; published 6-17-99

SBA's 8(a) Business Development Program; published 6-17-99

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Migratory bird hunting:

Mid-continent light geese—

Harvest reduction; regulation withdrawal; published 6-17-99

Migratory bird permits:

Canada goose damage management program; published 6-17-99

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1379/P.L. 106–35

Western Hemisphere Drug Elimination Technical Corrections Act (June 15, 1999; 113 Stat. 126)

Last List June 10, 1999

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